

OFFICIAL REPORT OF PROCEEDINGS  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 29

In the Matter of:

Starbucks Corporation, Case No. 14-RC-289926

Employer,

and

Chicago & Midwest Regional  
Joint Board Workers  
United/SEIU,

Petitioner.

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Place: Brooklyn, New York (Via Zoom Videoconference)

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29

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Employer,

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CHICAGO & MIDWEST REGIONAL  
JOINT BOARD WORKERS  
UNITED/SEIU,

Petitioner.

Case No. 14-RC-289926

The above-entitled matter came on for hearing, via Zoom videoconference, pursuant to notice, before **RACHEL ZWEIGHAFT**, Hearing Officer, at the National Labor Relations Board, Region 29, Two MetroTech Center, Brooklyn, New York 11201, on **Tuesday, August 16, 2022, 11:27 a.m.**



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E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**Board:**

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P R O C E E D I N G S

HEARING OFFICER ZWEIGHAFT: Thank you. Good morning.

This hearing will be in order. This hearing is before the National Labor Relations Board in the case -- in the matter of Starbucks Corporation, case number 14-RC-289926, pursuant to the order of the Regional Director, dated June 10th, 2022. The hearing officer conducting this hearing is Rachel Zweighaft. The official reporter makes the only official transcript of these proceedings and all citations and briefs, and arguments, must refer to the official record. In the event that any party wishes to make off-the-record remarks, requests to make such remarks should be directed to the hearing officer and not to the court reporter.

Statements of reasons and support of motions and objections should be specific and concise. Exceptions automatically follow all adverse ruling. Objections and exceptions may, on appropriate request, be permitted to an entire line of questioning. It appears from the Regional Director's Order dated June 10th, that this hearing is for the purpose of taking evidence concerning the -- the Employer's objection, specifically objections numbers 1, 2, 3, 4, 5, 6, 8, 10, 11, 12, 13, 14, and 15.

In due course, the hearing officer will prepare, and file with the Regional Director, her report and recommendation in this proceeding, and will cause a copy thereof to be served on

1 each of the parties. The procedure to be followed from that  
2 point forward is set out in Section 102.69 of the Board's Rules  
3 and Regulations.

4 At this point, I would ask the parties to state their  
5 appearances for the record. So let's start with the Employer,  
6 please.

7 MR. MENDELSON: Thank you. The Company is represented  
8 today by myself, Jedd Mendelson; Kim Doud, Betsy Carter.  
9 There's another lawyer, Jessica Faustin, who's on the call, who  
10 has made an appearance in the case, but I don't anticipate her  
11 conducting herself today in as (audio interference) counsel.

12 Also -- Also I should say there's a corporate  
13 representative Sara Jenkins, she is the -- at least last I  
14 spoke with her, she was the district manager for the district  
15 in which this store was located and she is the corporate  
16 representative today.

17 HEARING OFFICER ZWEIGHAFT: Thank you, Mr. Mendelson. For  
18 the Union?

19 MR. IGLITZIN: Thank you. For the Union it is myself,  
20 Dmitri Iglitzin; with me is Gabe Frumkin. Also just to  
21 complete the record, I believe there's another Littler  
22 Mendelson attorney also on the call, Alan Model.

23 MR. MENDELSON: Yes. Mr. Model. I think there may even  
24 be Mr. Oscar in there. They're lawyers in our firm but they're  
25 not here in any capacity as counsel at record.

1 MR. IGLITZIN: Thank you.

2 MR. MENDELSON: And Mari Orrego is also the Union's  
3 representative, as well, in a nonlegal capacity.

4 HEARING OFFICER ZWEIGHAFT: Thank you. And for the  
5 Regional Director?

6 MS. SCHNEIDER: Yes. Hello, my name is Abby Schneider. I  
7 am here as the representative of the Regional Director of  
8 Region 14, to see that the evidence adduced during the  
9 investigation is made available to the hearing officer. And  
10 pursuant to this function, I may ask some questions, and if  
11 necessary, call witnesses. I want to say that I am not here to  
12 support any preconceived position. My services are equally at  
13 the disposal of the hearing officer and all parties.

14 HEARING OFFICER ZWEIGHAFT: Are there any further  
15 appearances for the record? Okay. I hear none. Do any of the  
16 parties wish to make an opening statement before we proceed?

17 MR. MENDELSON: The -- the Employer would like to make  
18 a -- an opening statement.

19 HEARING OFFICER ZWEIGHAFT: Okay. Go ahead.

20 MR. MENDELSON: This hearing arises out of misconduct by  
21 Region 14 Board agents, including a supervisor who's now the  
22 Assistant Regional Director in that region as I understand it.  
23 And this hearing arises out of collusion between those Region  
24 14 Board agents, and the petitioning labor union through its  
25 counsel. Together they did the following.

1           In a stipulated mail-ballot election, they together  
2           arranged for some potential voters that the Union identified to  
3           vote in person at the subregional office without any of the  
4           protections that exist for in person elections having been put  
5           in place. And that would include having observers from both  
6           parties present. Region 14's agents, Board agents concealed  
7           their conduct from Starbucks' counsel, misrepresenting the  
8           actions of both Region 14, itself, and the Union.

9           They purported to act in accordance with "Board protocol".  
10          They represented that two replacement ballots had been mailed  
11          to two potential voters when, in fact, they prepared seven  
12          replacement ballots, and then mailed those seven potential  
13          voters those ballots, and kept separate replacement ballots  
14          onsite at the subregional office so that the seven potential  
15          voters, possibly eight, could come to the subregional office by  
16          appointment, of which only the Union and Region 14 were aware,  
17          and then cast those ballots in person, again, in a mail-ballot  
18          election.

19          Neither Region 14, nor Union counsel, informed Company  
20          counsel of any of this conduct. Rather than disclose all the  
21          facts on Monday, April 4, Board Agent (b) (6), (b) (7)(C) emailed  
22          Company counsel, Kim Doud, that (b) (6), (b) (7)(C) had mailed two ballots on  
23          Friday, April 1. No one else from Region 14 who knew what was  
24          happening, that would include Board Agent (b) (6), (b) (7)(C)  
25          (b) (6), (b) (7)(C) and now (b) (6), (b) (7)(C) and perhaps



1 others, nor Union counsel, and in -- in this case Mr. Frumkin,  
2 or any of his colleagues made any effort to supplement, or  
3 correct, (b) (6), (b) (7)(C) April 4 email to Ms. Doud which was  
4 patently incomplete and inaccurate.

5 When Starbucks counsel proposed adjournment of the ballot  
6 cutoff date, and the vote count date, April 6 and 8,  
7 respectively, in response to (b) (6), (b) (7)(C) email, and Ms. Doud  
8 expressed concern about the belated mailing of the two ballots,  
9 disenfranchising the two potential voters, Mr. Frumkin rejected  
10 that proposal on behalf of the Union, and Region 14, through  
11 (b) (6), (b) (7)(C), agreed with the Union that no adjournment was  
12 warranted.

13 In the course of that correspondence, the Union expressed  
14 confidence that all who wanted to vote would succeed in doing  
15 so. And now, with the true facts having emerged, it is  
16 apparent why the Union said that. It knew that several  
17 potential voters had made appointments, or were positioned to  
18 make appointments, to cast ballots in person, in person, even  
19 though this was a mail-ballot election.

20 Neither the Region, nor the Union, had told the Company  
21 what was happening behind the scenes, and the Regional  
22 Director, at no point took any steps to modify the stipulated  
23 election agreement that limited voting to mail. When the  
24 Company proposed adjournment of the ballot cutoff and vote  
25 count dates, Region 14 and the Union had the opportunity,

1 belabored as it was, then to come clean and attempt to even the  
2 playing field. This would have included proposing that all  
3 eligible voters have an opportunity to cast in-person ballots,  
4 if they had not yet mailed their ballots. But neither Region  
5 14 nor the Union did so. A coverup was afoot.

6 On the day of the ballot count, Board agent (b) (6), (b) (7)(C)  
7 remarked that (b) (6), (b) (7)(C) wanted to make clear that for ballots without  
8 a postmark, some unidentified "they" had made arrangements with  
9 Board personnel. (b) (6), (b) (7)(C) did not provide any further detail,  
10 rather this just as vague assurance, which was coupled later  
11 with the statement about this having been done in accordance  
12 with this uniden-- unidentified "Board protocol".

13 Seriously, however, (b) (6), (b) (7)(C) has prepared an internal  
14 Board memorandum, and (b) (6), (b) (7)(C) had separately prepared three  
15 internal Board memoranda that purport to memorialize what  
16 transpired in connection with at least three voters speaking  
17 with Region 14, and casting votes in person.

18 But none of those memoranda have been provided to the  
19 Company, and none of them as we understand -- excuse me, as we  
20 understand it, address the Union's collaboration with Regional  
21 personnel without the Region, or the Union, having informed the  
22 Company. contemporaneously as to what was unfolding.

23 Incomplete memos to file, a telltale sign of people  
24 covering their tracks when they have engaged in wrongdoing.  
25 Why else the need for the memorandum? And if called for by

1 Board protocol, Region 14 should produce those memoranda, and  
2 make the authors, and others involved in what transpired,  
3 available to testify under oath so that the entirety of the  
4 conduct in issue can come to light.

5 The ballot count, unfortunately, was also -- was also  
6 unfortunately eventful, in as (b) (6), (b) (7)(C) acknowledged that one  
7 ballot had been left in the subregional office, but its  
8 whereabouts had been unknown for one or more days. During the  
9 counting of the ballots, another ballot disappeared and was  
10 discovered in a box that was off camera and outside the view of  
11 the parties. There were seven ballots counted, two of which  
12 have these question marks hovering over them.

13 The summary of the evidence that the Company intends to  
14 adduce relates to the objections, Ms. Hearing Officer, that  
15 you've identified. Critical to the proceeding, will be your  
16 rulings on the petitions to revoke that have been filed by the  
17 Union, as well as Region 14. We'll address those in due  
18 course.

19 But as indicated, already, the Company's appoint -- the  
20 Company's point, far from specific responses to arguments made  
21 about those petitions, is that the Union and Region 14 are  
22 seeking to cover up misconduct in which the actors know they  
23 engaged, and it's imperative for you, the hearing officer, the  
24 Regional Director, and the Board, to make -- to take the  
25 necessary steps to air the truth about what happened in this

1 case.

2 As you know, I think, the Company submitted letters to the  
3 General Counsel, the Board's chairperson, and the Board's  
4 inspector general. In response to those letters, Board  
5 spokesperson Kayla Blado stated that "the Agency has well  
6 established processes to raise challenges regarding the  
7 handling" of matters such as this and "those challenges should  
8 be raised in filings specific to the particular matters in  
9 question". The Company is doing just that here, and expects  
10 that you, as hearing officer, will recognize the imperative  
11 that exists in favor of the Board permitting evidence of Agent  
12 misconduct and collusion with one party to become part of the  
13 record in this case.

14 The consequences here are not limited to this case. It  
15 goes to the integrity of the Board overall in any case that  
16 comes before it. Yesterday, the Company filed a motion to stay  
17 this proceeding. Region 29's Regional Director denied that  
18 motion which is surprising and disappointing, and the Company  
19 reserves its position -- position that the denial is  
20 prejudicial to it in view of the failure of both subpoena,  
21 person, and entities, including Region 14, the Union, and the  
22 employees to provide, or indicate a willingness to provide,  
23 responsive documents this morning, as well as any continued  
24 resistance to testifying.

25 We further note that pending before the Regional Director



1 remains the request for authorization to call as a witness with  
2 an appropriate protective order, the Board agent whistleblower  
3 who is prepared to testify to the misconduct that has taken  
4 place in Region 14 in this case. The failure of the Regional  
5 Director to grant that authorization immediately is prejudicial  
6 to the Company, since this person is the witness, other than  
7 Region 14 personnel who engaged in wrongdoing, and Union  
8 counsel with whom -- excuse me, the Union counsel with whom  
9 they collaborated (audio interference) best position to educate  
10 the Board and make the record that needs to be made with  
11 respect to the misconduct that has taken place.

12 This is yet another reason the Regional Director's denial  
13 of the motion to stay is prejudicial to the Company, and  
14 frankly, prejudicial to the Board itself, insofar as it has,  
15 and should have, complete interest in getting to the truth of  
16 what happened in this case.

17 Because the conduct in issue in this case was so heinous,  
18 the remedy that the Company seeks here is dismissal of the  
19 Union's petition for one year. The misconduct of the Union and  
20 Region 14 was so egregious, and the coverup even more so, that  
21 dismissal of the petition is necessary.

22 Representatives of the Region and the Union did not merely  
23 make misjudgments, they colluded and so tainted laboratory  
24 conditions as to foreclose this Union from damaging itself of  
25 the benefits the Act provide in this particular case. There

1 must be consequences for misconduct, especially in knowing a  
2 conscious effort to manipulate and corrupt how voting is  
3 conducted.

4 So to summarize, the parties here stipulated solely to a  
5 mail-ballot election, the Region and Union together, undermined  
6 that stipulation by permitting select Union favorable voters to  
7 cast their ballots in person at the subregional office. This  
8 is wrongful, objectionable, and unlawful in several ways.

9 Only some voters were able to cast ballots in person. Six  
10 employees who did not vote, might have done so, if they had  
11 been afforded the same opportunity that the Union negotiated  
12 with the Region behind the Employer's back. There was no  
13 oversight at the in-person voting, which was not subject to  
14 normal protocols and protections with both Union and Company  
15 observers present.

16 For these reasons, we ask that the hearing officer dismiss  
17 the petition.

18 HEARING OFFICER ZWEIGHAFT: Okay. Thank you, Mr.  
19 Mendelson.

20 Mr. Frumkin, do you have an opening statement?

21 MR. FRUMKIN: I do. Thank you. Good morning.

22 HEARING OFFICER ZWEIGHAFT: Good morning.

23 MR. FRUMKIN: By now, we're all familiar with this story.  
24 A party loses an election after a bruising campaign full of  
25 coercive conduct and rhetoric. That party is unwilling to

1 accept the legitimate outcome of the election. Rather that  
2 conceding defeat and recognizing the victorious party, the  
3 defeated party creates an alternate narrative replete with  
4 conspiracy theories feature deep state agents when the defeated  
5 party cannot allege that its supporters were prevented from  
6 voting. It alleges that some people were permitted to vote  
7 when they shouldn't have been. In contesting the election  
8 results, the objecting party is not afraid to cause collateral  
9 damage to the very institutions entrusted to protect the  
10 democratic processes we value in this country.

11 Indeed, the party may even want to do this damage, knowing  
12 the weaker institutions can only make them more powerful by  
13 comparison. Unfortunately, the same story we read -- or hear,  
14 or read about in the news is being imposed on us today. The  
15 Employer has brought 13 election objections before Region 29.  
16 In all of these objections, they accuse Region 14 of various  
17 forms of misconduct. Their objections are so expansive and  
18 broad that if found to warrant a rerun election, every Board  
19 election from here to eternity could be set aside based on the  
20 bad safe communes of a party that is unwilling to accept  
21 defeat.

22 The Employer's objections broadly pursue two theories.  
23 First, in objections 1 through 5, the Employer contends that  
24 Region 14 erred by permitting two employees to pick up ballots  
25 at the Subregion 17 office, use them to vote, and then return

1     them. The Employer apparently possesses evidence that shows  
2     that those employees voted before ballots were due in  
3     circumstances that guaranteed their privacy and secrecy of  
4     their ballots.

5             The Employer contends that this conduct violated the  
6     stipulated election agreement between the parties, and that  
7     this makes the matter objectionable. The irony in the  
8     Employer's position is rich. Before the vote began, the  
9     Employer repeatedly represented that it was concerned that  
10    workers would be disenfranchised. But then, when two workers  
11    were able to cast their ballots due to the hard work of the  
12    Region 14 staff, who found themselves in a tight spot, the  
13    Employer did a 180 and challenged the ballots of those two  
14    voters, as well as the votes of several other employees.

15            The wider context of the union campaign at the store may  
16    shine a light on the Employer's true intentions. At the time  
17    the Employer asserted its interest in making sure every vote  
18    was counted, it was also engaged in a brutal anti-union  
19    campaign that was largely the subject of a recent ULP hearing.  
20    It was so bad that the workers went on strike in the days  
21    leading up to the vote count, in part, because they were  
22    terrified of being fired, before the vote count was completed.

23            The Employer may have wanted simply to wait out the Union,  
24    rather than respecting the clear desires of the majority of  
25    their employees at this store.



1           Second, the Employer alleges that the Region perpetuated  
2           objectionable conduct during, and perhaps, shortly after the  
3           vote count. The objections seemed to show a whole lot of  
4           nothing, except maybe a belief in magic. In one objection the  
5           Employer objects because a ballot was momentarily stuck in a  
6           cardboard box it used to commingle the ballots, and then in  
7           another, in objects because the ballots were out of sight under  
8           a table for a few minutes, while the Board agent attended to  
9           another task in full view of the parties.

10           In an objections case, the burden is on the objecting  
11           party to prove its case. The Board conducted representation  
12           election is presumed to be valid. Thus, an objecting party  
13           must demonstrate not only that the conduct occurred, but also  
14           that the conduct interfered with the free choice of employees  
15           to such a degree that it has materially affected the results of  
16           the election.

17           An election may be set aside if the objecting party shows  
18           that an election irregular -- irregularity possibly  
19           disenfranchised a sufficient number of voters to affect the  
20           election outcome. In this case, the Employer won't be able to  
21           carry its heavy burden. Here's what's missing from the case.

22           First, the Employer won't be able to carry its burden of  
23           proving that any employees were disenfranchised. Indeed,  
24           according to Board law, an election will be set aside only if  
25           the objecting party shows that an election irregularity

1 possibly disenfranchised a sufficient number of votes to affect  
2 the election outcome. Here, contrary to alleging any  
3 disenfranchisement, the crux of the Employer's objections is  
4 that Region 14 successfully made sure that two employees would  
5 have -- who would have been prevented from voting, were, in  
6 fact, able to vote. Region 14 staff did so in a way that was  
7 less disruptive than prolonging the vote period, and better  
8 satisfied the objectives of the Agency, as spelled out in  
9 Section 11000 of the Case Handling Manual, to expeditiously  
10 process representation petitions.

11 Surely, the standard for overturning an objection based  
12 because the Board made sure eligible voters could be  
13 enfranchised, must be much higher than when a party alleges  
14 disenfranchisement.

15 Second, the Employer will be unable to carry its burden  
16 that the conduct it has objected to, caused either a  
17 prejudicial, or material change, in the outcome of the  
18 election. Here, the Employer has objected to a number of  
19 alleged breaches to the stipulated election agreement. The  
20 Employer challenged most of these ballots, and the challenges  
21 were not contested, and the revised tally of ballots shows the  
22 union victory of 6-1 with no challenged ballots. It's as  
23 though those ballots that were challenged were never counted  
24 because they never were.

25 That being the case, the Employer's objections concern at

1 the most, only maybe one ballot that was actually counted.  
2 This is not material or prejudicial to the outcome of the  
3 obj -- election.

4 The Employer's other objections are equally basis --  
5 baseless. The Employer will be unable to prove that the  
6 conduct it objected to in objections 10 through 15 merit a  
7 rerun election, because they will be unable to prove that there  
8 was any ballot tampering or wrongdoing. In other Board cases,  
9 including in person elections, Board agents are routinely left  
10 alone with ballots. In fact, there would be no way to con --  
11 conduct Board business if ballots were not occasionally out of  
12 sight of the parties. Here, where there's no evidence that the  
13 subregional office was ever open to the public, there is also  
14 no evidence that any of the ballots were ever subject to  
15 tampering or alteration.

16 Finally, the Employer's objections also lack any surviving  
17 objection regarding alleged misconduct by the Union. Only one  
18 of the Employer's original objections alleged that the Union  
19 engaged in misconduct by alleging that it somehow engaged in  
20 ballot harvesting. Finding that the Employer had no probative  
21 evidence to support that objection, Region 29 has already  
22 overruled that objection. This is important for two reasons.

23 First, practically, the hearing officer is forbidden from  
24 considering evidence of how objections that were not pled in  
25 the Employer's original objections, and which were overruled.

1 This makes any aspersions about any alleged union misconduct  
2 irrelevant to the narrow questions about Region 14's alleged  
3 misconduct.

4 Second, and more broadly, any efforts to turn this hearing  
5 into a forum for disparaging the Union would be inappropriate,  
6 potentially unlawful, and should not be tolerated. Indeed,  
7 with no objection regarding a nonexistent coverup, it is  
8 procedurally improper to discuss that, or any other matter, not  
9 specifically alleged in the objections.

10 Outside of this hearing, the Employer has already made its  
11 true intentions plain. Rather than continuing to play the  
12 Board game, it's attempting to flip the table over by  
13 requesting a halt to all NLRB mail-ballot elections. It seeks  
14 to postpone elections totally unrelated to this one across the  
15 entire country, even in a total absence of evidence of any  
16 wrongdoing.

17 Just like the Board's not permitted to processes these to  
18 become inaccessible nationwide, we must not permit Starbucks to  
19 get a rerun petition where, as here, it is simply unwilling to  
20 accept defeat, and where there is no compelling reason to  
21 believe the election was tainted.

22 In closing, I highlight one additional point. If the last  
23 few days in opposing counsel's opening statement are any  
24 indication, you may be asked to adjudicate a number of  
25 evidentiary issues in this hearing. Specifically, you will be

1     faced with Starbucks unprecedented effort to embroil both the  
2     workers who supported unionizing, and their counsel into this  
3     dispute. Starbucks wants to put the workers on the stand to  
4     interrogate them about their desire to vote. A desire which  
5     they're absolutely entitled to have, and to act on, and which  
6     they did. And Starbucks wants to put Workers United -- Workers  
7     United's own attorneys on the stand, to make this into a shadow  
8     puppet show, as part of its potted claim that it is a victim of  
9     some vast nationwide conspiracy.

10           Both efforts need to be rejected because neither is going  
11     to supply any facts relevant to any issue at this hearing.  
12     Instead, forcing workers and counsel to testify will, on  
13     balance, do nothing but deter lawful Section 7 activity by  
14     workers, including the workers nationwide, who Starbucks  
15     notified about this very hearing, and tried to intimidate  
16     Workers United counsel from doing their jobs. For by example,  
17     accusing us of extraordinary misconduct, and then trying to  
18     conceal this misconduct.

19           Starbucks threw this accusation -- threw this accusation  
20     out just yesterday in its emergency motion to stay the  
21     election, and as such, provided you with a roadmap of what it  
22     actually intends to do during this hearing.

23           Of course, there was no extraordinary misconduct by Region  
24     14 staff, the employees, or counsel for Workers United, and as  
25     such there was no attempt to conceal any such alleged

1 misconduct. As you listen to the evidence today, and  
2 especially, and you warn evidentiary issues, we ask that you  
3 keep in mind our willingness to stipulate to all relevant facts  
4 here, in order to allow you to get to the heart of the  
5 objections which Starbucks hopes to distract you from, and  
6 ultimately reach a conclusion upholding the election victory of  
7 Workers United at the I-35 and 75th store. Thank you.

8 HEARING OFFICER ZWEIGHAFT: Thank you. Ms. Schneider, do  
9 you wish to make an opening statement?

10 MS. SCHNEIDER: I do not. Thank you.

11 HEARING OFFICER ZWEIGHAFT: Okay. Thank you. Ms.  
12 Schneider, are you offering the formal papers this morning?

13 MS. SCHNEIDER: Yes. I will, Hearing Officer. I will  
14 offer into evidence the formal documents which were distributed  
15 to all parties yesterday. They have been marked for  
16 identification as General Counsel Exhibit Number 1(a) through  
17 (d), (d) is an index and description of documents.

18 HEARING OFFICER ZWEIGHAFT: Thank you. And just to  
19 clarify, I think it's Board Exhibit and not a General Counsel  
20 Exhibit in the R case.

21 MS. SCHNEIDER: Oh, okay. I -- I just saw on page 1; it  
22 was listed as GC Exhibit 1.

23 HEARING OFFICER ZWEIGHAFT: Oh, okay.

24 MS. SCHNEIDER: Perhaps that was in error. If -- if I  
25 should make a change, I can.

1 HEARING OFFICER ZWEIGHAFT: That's okay. I think we  
2 can -- I'll take it in the record as Board 1 though not --

3 MS. SCHNEIDER: Okay.

4 HEARING OFFICER ZWEIGHAFT: And not GC-1.

5 MS. SCHNEIDER: Okay.

6 HEARING OFFICER ZWEIGHAFT: Any -- the parties did receive  
7 the formal papers yesterday. Mr. Mendelson, I apologize  
8 because I don't think I copied you; I sent them to Ms. Doud,  
9 and Ms. Carter, because I --

10 MR. MENDELSON: That's okay. I -- I -- I have them -- I  
11 have them.

12 HEARING OFFICER ZWEIGHAFT: Okay. I'm just -- I didn't --  
13 I didn't -- I had Ms. Doud and Ms. Carter as the appearing  
14 attorneys. Any objection to the -- to the acceptance of the  
15 formal papers?

16 MR. MENDELSON: No -- no objection. In fact, I was going  
17 to ask, but you've already accounted for it, if there were  
18 other papers that belonged in there, but your marking of Board  
19 Exhibits 2 and 3, addresses that. There -- there may be other  
20 exhibits, before we're done with the introductory portion of  
21 this, I'd like to just check and see whether there's anything  
22 else I think should be marked that way. But I have no  
23 objection to Board 1 or Board Exhibits 2 or 3.

24 HEARING OFFICER ZWEIGHAFT: Okay. Thank you. Mr.  
25 Iglitzin?

1 MR. IGLITZIN: We do not object to Board Exhibit 1.

2 HEARING OFFICER ZWEIGHAFT: Okay. Thank you. So Board  
3 Exhibit 1 is accepted.

4 **(Board Exhibit Number 1 Received into Evidence)**

5 HEARING OFFICER ZWEIGHAFT: As long as we're talking about  
6 Board exhibits, I did circulate to the parties this morning  
7 Board Exhibits 2 and 3. Board Exhibit 2 is the Regional  
8 Director's Order which referred, I believe, five petitions to  
9 revoke subpoenas to me as the hearing officer. This Order was  
10 issued yesterday, August 15th, 2022. Any objection to Board  
11 Exhibit 2?

12 MR. MENDELSON: No objection.

13 MR. IGLITZIN: No objection.

14 MS. SCHNEIDER: No objection.

15 HEARING OFFICER ZWEIGHAFT: Okay. Thank you. Board  
16 Exhibit 2 is -- is received and we'll be turning to the  
17 petitions in a moment.

18 **(Board Exhibit Number 2 Received into Evidence)**

19 HEARING OFFICER ZWEIGHAFT: And then Board Exhibit 3, I  
20 believe Mr. Mendelson made reference to another order from the  
21 Regional Director also dated August 15th, 2022, which denied  
22 the Employer's request for an emergency stay of the hearing.  
23 That was issued last night. I, personally, sent it to the  
24 parties last night because it was sent out after hours. Just  
25 as a heads up, I don't know if the -- the Region may also send



1     it today with a more official service. I don't have an  
2     affidavit of service, although I can certainly represent on the  
3     record that I, personally, served it. Again, Mr. Mendelson,  
4     apologies that I didn't copy you, but I assume that you got a  
5     copy of it. Any objection to Board Exhibit 3?

6             MR. MENDELSON: No objection.

7             MR. IGLITZIN: No objection.

8             MS. SCHNEIDER: No objection.

9             HEARING OFFICER ZWEIGHAFT: Okay. So Board Exhibit 3 is  
10    also received.

11    **(Board Exhibit Number 3 Received into Evidence)**

12            HEARING OFFICER ZWEIGHAFT: Okay. I think probably at  
13    this point it makes sense to talk about the petitions to  
14    revoke. Does anybody have anything before we get into that, I  
15    think that's probably going to take us some time to work  
16    through. Okay, hearing nothing --

17            MR. IGLITZIN: I guess -- I -- I guess what I would  
18    suggest, and this is just -- bring everybody up to speed.

19            HEARING OFFICER ZWEIGHAFT: Sure.

20            MR. IGLITZIN: There are a number of foundational facts at  
21    issue here that are not actually in dispute. And I think it's  
22    important for the hearing officer to know that, because it will  
23    deform whether or not various portions of the subpoenas should  
24    be revoked or enforced. The core of the Employer's objections  
25    related to what it describes is a violation of the stipulated

1 election agreement, and this being a mail-ballot election, is  
2 that the Union reached out to Region 14, and sought a method by  
3 which workers who, through no fault of their own, were not  
4 mailed ballots which should have been mailed to them.

5 Region 14 had a administrative screw up, and although  
6 these workers were supposed to be mailed ballots, they were not  
7 mailed ballots. And Region 14 notified the Union and Starbucks  
8 of that approximately three days before the ballots were due to  
9 be received. At that point, there was no practical way for the  
10 Region to mail ballots to these workers, and have the workers  
11 receive those ballots in time to mail their votes in.

12 So Mr. Frumkin, of my office, reached out to Region 14 and  
13 said, is there a solution here, and with Region 14 the solution  
14 was well, these workers can come in person to Region 14, pick  
15 up ballots in person, and vote in person. That is, by the way,  
16 the entirety of the argument that has resulted in Starbucks  
17 screaming to the rafters about collusion and misconduct.

18 The Union and Region 14 trying to figure out a way to make  
19 sure that workers who were indiscriminately entitled to vote,  
20 would be able to vote, notwithstanding the administrative  
21 mistake of Region 14.

22 The Union proposed a detailed list of facts related to  
23 these conversations, and the subsequent actions, starting with  
24 the Union being notified, along with Starbucks, that the  
25 ballots had not gone out to these workers, continuing through

1 the discussion with the Region about alternative ways for these  
2 workers to vote, continuing through the fact that two of the  
3 workers did go and vote in person, and culminating in the fact  
4 that Starbucks objected to those ballots at the ballot count,  
5 and so they were never counted in any event.

6 We asked Starbucks if it would stipulate to those facts in  
7 order to expedite matters at this hearing, and also to make it  
8 unnecessary to drag in the workers off their jobs and lives to  
9 testify as to the fact that they, in fact, chose to vote, which  
10 they had every right to do, and to not have that extraordinary  
11 and unusual circumstance of counsel for a party being forced to  
12 be under oath to testify as to these matters which, again, are  
13 not seriously the subject of any factual dispute.

14 Starbucks responded with one-word answer to our proposed  
15 stipulation, which was, no. Starbucks was not willing to  
16 stipulate to any of those facts. The Union submits that we  
17 spend some time identifying the facts which are not in dispute,  
18 which are roughly the facts I have described, although Mr.  
19 Frumkin is prepared to give a much more detailed rendition of  
20 the exact series of events here.

21 If the -- if those are the facts which Starbucks seeks to  
22 prove through testimony from Mr. Frumkin, and/or myself, and or  
23 from these workers, there is no reason to enforce those  
24 subpoenas, because there's no reason to bring in witnesses to  
25 prove facts which are not in dispute.

1           So that is the context. And we have a sort of -- I will  
2       make a standing request, for an offer of proof as to what  
3       information Starbucks believes it will elicit through the  
4       testimony and documents it seeks, that is relevant to this  
5       hearing and the hearing officer's opinion that is something the  
6       Union will not stipulate to. It may be that there are things  
7       Starbucks seeks to prove that the Union does not think are  
8       true, and will not stipulate to, and therefore, some testimony  
9       on that point is necessary. I have not been able to identify  
10      it. As such, I have been accused -- Mr. Frumkin had been  
11      accused of extraordinary misconduct and collusion and  
12      conspiracy, and we feel like we're in somewhat good company in  
13      being accused of all of those things by a -- a -- a -- an  
14      entity in this that has lost an election, but rather than spend  
15      a lot of time at this hearing arguing about all of that  
16      nonsense, we'd like to focus on the hearing and figure out  
17      what, if anything, is actually in dispute as to the steps that  
18      the workers, the Union, and Region 14 took in this election.

19           MR. MENDELSON: May -- may I be heard --

20           HEARING OFFICER ZWEIGHAFT: Yes, please.

21           MR. MENDELSON: -- Hearing Officer Zweighaft?

22           HEARING OFFICER ZWEIGHAFT: Yeah.

23           MR. MENDELSON: So we rejected the, I think it was seven  
24      single-sentence stipulations because they were manifestly  
25      incomplete, and we believe they're not accurate, but one of the

1 problems that the company has here, of course, is it's in the  
2 dark.

3 And forgive me, Mr. -- I'm not sure how you say Dmitri's  
4 last name. Ig -- [Ig-lit'-zin]?

5 MR. IGLITZIN: [Eeg-lit'-zin].

6 MR. MENDELSON: And -- thank you. Mr. Iglitzin started  
7 out by, I think, in his opening remarks, noting that the Union,  
8 through counsel, was in contact with Region 41 (sic) trying to  
9 solve a problem. The -- the failure to involve the Employer in  
10 the problem solving is just the first of many material  
11 oversights here.

12 Also, I'm -- I'm not sure -- I don't want to be unfair to  
13 Mr. Iglitzin, but he presented to you -- what he did is that  
14 these contacts began around the time of the email between the  
15 Region and the parties on April 1, but based upon what we know,  
16 those contacts began at least as early as March 23, and perhaps  
17 before, meaning, as far as we can tell, and we may be mistaken,  
18 because there are a lot of facts that are outside our  
19 knowledge, that's the problem, there was a recognition that  
20 these two ballots had not been sent, but for whatever reason,  
21 the Region did not act quickly or promptly in trying to rectify  
22 the situation.

23 So with that said, I wanted to say to you, there's a very  
24 easy way that we could work toward a stipulation of facts here  
25 if the Union and the Region were to provide the documents, many

1 of which we've already identified to them in the letter that we  
2 sent to the General Counsel and the Board, we believe -- I  
3 would say we know, but that that would be unfair, we believe  
4 those documents are all extant documents that are accessible.  
5 Obviously, they would have had to have been preserved. No one  
6 would have dared, presumably, to destroy anything. Those  
7 documents, if produced, would probably form the basis to have  
8 stipulations, perhaps not sufficient in their breadth to  
9 prevent any witness testimony, but probably sufficient in  
10 breadth to allow this to become a much more contracted  
11 proceeding. Perhaps, I say, perhaps, sufficient to avoid the  
12 need to call any employees as witnesses. I say perhaps,  
13 because I don't know that, but I -- I understand the Union's  
14 goal in that regard. I'm not critical of that. If we can  
15 avoid interfering with the work lives of any one, any  
16 individual, that would be propitious -- propitious to do, but  
17 there's no stipulation at this point without the production of  
18 the documents that we should have.

19 I'll -- I'll silence myself in a moment, Madam Hearing  
20 Officer, but I do want to say, I -- I -- I think in my opening  
21 statement, I mentioned that the Board, through a spokesperson,  
22 said that we should go through available channels. The -- the  
23 danger here when we have, by virtue of what a whistleblower has  
24 told us, come forward with very specific allegations, not vague  
25 allegations, as -- as Mr. Frumkin suggested, the danger here is

1     that we're being -- we're being put to the game that we're  
2     supposed to now go through procedures where neither the Union  
3     nor the Region is prepared to provide the documentary evidence  
4     that either corroborates or refutes what we have asserted. And  
5     that's the danger, that we should even have to have an argument  
6     about that. So if the Region and the Union are prepared to  
7     present documents which we will identify with specificity, we  
8     already have, but we will, in any form that we need to do so,  
9     including an offer of proof, then we could probably cut to the  
10    core on this case very quickly.

11           And I -- I do want to say, before -- before Dmitri  
12    responds, Ms. Doud -- Ms. Doud is more familiar with this than  
13    I, so if there's something she wants to say to supplement me,  
14    she ought to do so. Almost -- I don't want to say almost  
15    everybody. Most of the lead participants here in this hearing  
16    were participants in the action of the case. I -- I was not,  
17    so I do want to give Ms. Doud an opportunity to supplement that  
18    before -- before Mr. Iglitzin responds.

19           MS. DOUD: Okay.

20           HEARING OFFICER ZWEIGHAFT: Okay. And Ms. Doud, just to  
21    help the court reporter, I mean, I think I've now identified  
22    you, but please just state your name at the beginning of your  
23    remark.

24           MS. DOUD: Yes. Kimberly Doud, attorney Litt -- for  
25    Littler Mendelson and Starbucks. I just wanted to echo what

1 Jedd said. And while Mr. Iglitzin would like to categorize  
2 this is "all nonsense", we think it's the farthest thing from  
3 nonsense. What has happened here, and what has gone on since  
4 March 23rd, and Mr. Frumkin's, at least, as far as we know,  
5 first contact with Region 14 asking for in-person voting. And  
6 it continued on March 31st when there was a contact between Mr.  
7 Frumkin and Region 14 asking if the voters could come by, pick  
8 up, and vote in person. He claimed that Region 19 had allowed  
9 this in the past. So we are very concerned about what we have  
10 learned has transpired not only in this election, but possibly  
11 others. So while they would like to characterize things as  
12 "vague", "absurd", or "nonsense", we take this very seriously,  
13 and we assume that the Board and Region 14 take their oaths of  
14 neutrality very serious.

15 HEARING OFFICER ZWEIGHAFT: Okay. Mr. Iglitzin, do you  
16 want to respond --

17 MR. IGLITZIN: I would.

18 HEARING OFFICER ZWEIGHAFT: -- to (indiscernible,  
19 simultaneous speech)?

20 MR. IGLITZIN: And let me tell you, I have characterized  
21 this (audio interference) this hearing in stronger language  
22 than "vague,", "absurd", and "nonsense", but that -- that will  
23 do, I think through this hearing.

24 I do think, and I appreciate Mr. Mendelson's suggestion  
25 that if Starbucks is interested and willing to provide what it



1 clearly has in its possession, the written communications  
2 between the Union and Region 14, which we have no concerns  
3 about, we are an open book with regard to what we did here,  
4 tried to help workers, who are entitled to vote, vote. I think  
5 we very likely can agree on producing additional copies of  
6 those -- those emails, if Starbucks does not want to produce  
7 them, even though it apparently has them, and preparing -- I --  
8 I think I agree with Mr. Mendelson that's likely to present a  
9 chronology that -- that those emails themselves state. We have  
10 no problem doing that. We think that would be efficient. And  
11 obviously, Ms. Doud's comments about Region 19 go far beyond  
12 the scope of this hearing, which everyone has to agree is based  
13 on whether something went wrong with this election sufficient  
14 to require the election results, the win of the workers, to be  
15 overturned. But we are not averse to producing or stipulating  
16 to the specific communications Mr. Frumkin had with Region 14.  
17 It is absolutely routine. And both Starbucks and Workers  
18 United have countless had communications with Board agents  
19 throughout the country in the 200 and something elections that  
20 the Union has won, countless discussions about trying to make  
21 sure everybody gets proper ballots, and we're happy to -- to  
22 agree to the record of what -- how that happened and played out  
23 in this particular election.

24 HEARING OFFICER ZWEIGHAFT: Okay. Well, I will say that  
25 I -- I'll -- you know, if we're able to work issues out

1     regarding these documents, you know, I think that sounds like  
2     it's worthwhile.

3             Would it help to give the parties some off-the-record time  
4     to discuss production before I -- you know, before we spend a  
5     lot of time going through petitions to revoke? I take it that  
6     we might moot some of those issues.

7             MR. MENDELSON: Madam Hearing Officer, I -- I do agree  
8     with you. I think it makes sense to do that, but let me go a  
9     step further here, and again, Ms. Doud should interrupt or  
10    correct me where appropriate. I -- I don't think this is a  
11    bipartisan effort. I think it has to be a trilateral effort.  
12    I think the problem here is that Union counsel will have some,  
13    but not all, pertinent communications, and if we are going to  
14    try to cut through this, and cut to the core, which I think is  
15    an admirable objective for all, the question really is  
16    necessarily put to Ms. Schneider as to whether or not the  
17    Region can do so as well, because it is plausible to us that  
18    there are communications that are internal to the region that  
19    the Union does not have that goes to the chronology. And with  
20    all due respect to the Board, we don't think that these are  
21    deliberative, or even investigative. We think that these are  
22    all fact communications, and that's -- that's -- all we're  
23    seeking here at this juncture is to try to establish the facts  
24    that are ultimately indisputable, or -- or, you know, it may be  
25    an overstatement to say they're absolutely indisputable. It

1 may be that there's a writing that somebody would dispute,  
2 but -- but if we can generate those, this becomes a much more  
3 compartmentalized and efficient proceeding.

4 HEARING OFFICER ZWEIGHAFT: Okay. Well, I don't want  
5 to -- Ms. Schneider, do you want to -- do you want to respond?  
6 I don't want to respond for you. Go ahead.

7 MS. SCHNEIDER: Sure. I -- I can respond, and I -- I  
8 appreciate, you know, the parties' desire to work amicably  
9 toward this, but the Region will not be complying with the  
10 subpoenas. General Counsel has not given permission for us to  
11 do so, and -- and therefore, we will not be able to.

12 MR. MENDELSON: So can I -- can I respond? I don't want  
13 to interrupt you, though, Ms. Schneider.

14 MS. SCHNEIDER: Yeah.

15 MR. MENDELSON: It does seem to me that the August 9  
16 letter from the General counsel denying -- denying the  
17 company's requests, and -- and then putting it on the parties,  
18 at least initially, to go forward, was issued prior to the  
19 emergence of the whistleblower. And it does seem to us that  
20 it -- that's one reason I -- I believe we filed the motion to  
21 stay. It does seem to us that it would make sense for the  
22 General Counsel, to whom -- to whom the Regions report, revisit  
23 the question with the General Counsel because it does seem to  
24 us that in the absence of what we're seeking being  
25 investigative or deliberative, it did not really make a lot of

1 sense to us, no disrespect intended to anyone.

2 I've got in front of me General Counsel Memorandum 9414.  
3 That document indicates all the circumstances in which a  
4 request like the company's is denied, but it also acknowledges  
5 those instances where it's granted, one of which is when a  
6 party alleges that a Board a -- Board agent's conduct has  
7 interfered with the conduct of an election. And -- and it goes  
8 earlier in this document to state that this is a class of case,  
9 I'm reading the first paragraph on page 2. I'll read it  
10 literally, quote, "because other classes of requests under  
11 Section 102.118 frequently have been granted, and in order to  
12 speed consideration of requests and eliminate paperwork and  
13 lab -- layers of review, I have decided to delegate to Regional  
14 Directors the authority to consider and decide whether or not  
15 to approve requests for authorization under Section 102.118 in  
16 the following additional circumstances", and that led in to the  
17 item I just read at the outset, all -- alleged misconduct of  
18 Board agents.

19 So what the reference there is that these applications  
20 have frequently been granted, and so to the company, it was  
21 something of a disconnect that the General Counsel would deny  
22 this request. And again, I submit that in the face of our  
23 letter of August 15, where between pages -- forgive me, I have  
24 to just find it -- between pages 6 and I think it's 6 and 13,  
25 we detail dates, times, documents, phone calls -- phone calls

1 and discussions that are oral obviously can't be part of this,  
2 but it seems to us that the Region and the General Counsel  
3 should revisit this question, because it does not -- no  
4 offense, it does not make a lot of sense to us that documents  
5 that are not deliberative and that are not investigative in  
6 terms of what they're examining, they're simply recounts of  
7 fact between communications of parties with the Region, those  
8 are things that -- that ought to be produced when an allegation  
9 as severe as this one has been raised. And I will say, it's  
10 not a vague allegation, by virtue of what the whistleblower has  
11 told us. We've provided enormous detail. Set -- setting aside  
12 whether there's anything that we're not aware of, just the  
13 production of the documents, and particularly, the emails that  
14 we've -- that we suggested, again, it would cut to the core of  
15 this case. I don't know that we'd have an absolute 100 percent  
16 stipulated record, but we'd get a long way to it.

17 MS. DOUD: I would --

18 HEARING OFFICER ZWEIGHAFT: I just --

19 MS. DOUD: -- I would like to add --

20 HEARING OFFICER ZWEIGHAFT: I'm sorry. I just -- I just  
21 want to clarify for everybody, in terms of what's before me, I  
22 have not seen the letter to the General Counsel. I don't think  
23 I need to see it. It's not part of my record, but I just want  
24 to be clear with everybody that that's not part of my record.  
25 And you know -- and I will say, in terms of what Ms. Schneider

1 or I could either agree to or order, this is really a question  
2 for either the General Counsel, or if the General Counsel were  
3 to delegate to a -- to the Regional Director. So you know, I  
4 understand if you want to -- you -- I'll allow you to make any  
5 of the arguments on the record regarding, you know, your -- the  
6 argument regarding anything that you've requested from the  
7 Region, but those, you know -- I'll allow you to do that for  
8 the purpose of making your record, but it's -- it's not a  
9 question that I think Ms. Schneider or I is really going to be  
10 able to answer for you.

11 I -- I will say, you know, I -- so I under -- I -- I know  
12 generally that there was a request, and that the General  
13 Counsel denied that request. I don't know particularly what  
14 was requested. I have seen, you know, just from the petition  
15 to revoke, which I'm, at this point, not going to rule on,  
16 because we haven't discussed it, but you know, I just want  
17 to -- I just want to be clear, kind of, with everybody what the  
18 contours are of the role of Ms. Schneider and I in this  
19 hearing, and you know, where the -- where you -- where your  
20 arguments can be directed.

21 Ms. Doud, go ahead.

22 MS. DOUD: Yes. I just want to add for the record, and  
23 while we understand, and I -- and I hear what you're saying, I  
24 would like to say that what -- when Ms. Schneider said, you  
25 know, she can't -- it was denied, she hasn't been told that she

1 can do anything other than the -- the deliberative process  
2 privilege is a type of executive privilege. It's based on  
3 common law for government officials. It's not constitutional  
4 law. It's a qualified privilege that can be overcome by a  
5 showing need, and disappears if there's any allegation of  
6 government misconduct. That's exactly what's before you as the  
7 hearing officer. The government privilege cannot shield its  
8 own misconduct, and that's what we're trying to get to the  
9 heart of here. And I -- I hear and appreciate Mr. Iglitzin  
10 saying that we'll open up our documents, but there are  
11 documents that have been identified that are -- only rest in  
12 Region 14 and the government's case management system. And so  
13 we're asking for them to work with us and open those up. Thank  
14 you.

15 HEARING OFFICER ZWEIGHAFT: Okay. So I -- I -- I hear  
16 you. I hear -- you know, I -- and I appreciate the willingness  
17 of the parties to, you know, work towards getting us to a place  
18 where we can streamline this hearing and be efficient. I think  
19 especially in a hearing where we are literally all over the  
20 Country and spanning three different time zones, and I, you  
21 know, I should have said this at the beginning, I appreciate  
22 everybody accommodating the scheduling for this, you know, that  
23 is definitely worth doing.

24 You know, again, I know Ms. Schneider is not going to be  
25 in a position to agree to, you know, share anything that she

1     hasn't been given permission to share, and I hear your  
2     arguments. Again, I think those need to be directed -- I  
3     don't -- you know, I don't know if a motion to reconsider, or a  
4     renewed request, perhaps. I -- I -- I don't know. I don't --  
5     you know, it's up to you, obviously.

6             I think at this point, it sounds like it would be worth  
7     giving at least the Union and the Employer some time, and Ms.  
8     Schneider, you know, if it makes sense for you to be part of  
9     that conversation, that's fine, to talk about at least that  
10    piece of the production, because we do have petitions to revoke  
11    that go to documents that the Union has, testimony from Union  
12    witnesses, and I'm wondering if perhaps that at least makes  
13    some sense and would be -- you know, might whittle down if  
14    there were still things outstanding that you wanted to renew a  
15    request from the -- from the GC?

16            MR. MENDELSON: I -- I think what you're suggesting makes  
17    great sense. I think we all just wanted to vet, on the record,  
18    what we needed to vet. And it would make sense to have the  
19    company and Union caucus.

20            HEARING OFFICER ZWEIGHAFT: Okay.

21            MR. MENDELSON: Before -- before we caucus, I think  
22    company counsel wants to just talk among themselves how -- how  
23    most efficiently we can present to the Union our suggestion for  
24    what we need. Union, in the meantime, can -- can -- can look  
25    at our letter, and I think it will help the Union understand



1     what documents we understand the Union would have, because  
2     that -- that's ultimately what we're seeking.

3             And -- and I -- I guess with respect to Ms. Schneider,  
4     I -- well, let me back up. I appreciate the hearing officer's  
5     suggestion that maybe it's a motion for reconsideration. I  
6     guess I held out hope -- I'm an -- I'm an eternal optimist.  
7     I'm often disappointed -- that if Ms. Schneider was to  
8     communicate to the Regional Director, who under GC 94-14 has  
9     authority, and/or the Regional Director and Ms. Schneider were  
10    to communicate with the General Counsel's office, perhaps we  
11    can eschew having to do a formal motion for reconsideration,  
12    and more expeditiously present that question again. I would  
13    hope that if the General Counsel heard that the government's  
14    participation in this portion of this matter would -- we cut to  
15    the core on this, the General Counsel's office would be part in  
16    that, that we could accomplish several purposes: put this case  
17    to bed, and -- and perhaps also assist the General Counsel in  
18    ascertaining what it will need to ascertain the in any event,  
19    in -- independent -- independent of the case.

20            So -- so if you -- what you don't know, Madam Hearing  
21    Officer, is that the whistleblower, as I understand it, may  
22    have been in contact with the Inspector General, and I don't  
23    know specifics about that, but -- but it -- it just strikes us  
24    that this is an endeavor that probably is going to have to  
25    happen anyway. Why not have it happen here and get the case

1 resolved similarly at the same time?

2 HEARING OFFICER ZWEIGHAFT: Okay. Well, and again, any --  
3 any communication like that is -- is not before me. I'm, you  
4 know, limited to my record in this case, but I do want to have  
5 as full a record as we need, obviously.

6 So why don't we -- all right. Why don't we go off the  
7 record, and we'll discuss how we're going to caucus, okay? So  
8 off the record.

9 (Off the record at 12:23 p.m.)

10 HEARING OFFICER ZWEIGHAFT: Thank you. So we took a -- a  
11 brief recess, and the Employer had a chance to caucus, and then  
12 the Employer and the Union had a chance to caucus as well.

13 Mr. Mendelson, do you want to, you know, state what you're  
14 proposing?

15 MR. MENDELSON: Yes. Thank you. And -- and Mr. Iglitzin  
16 can then correct me if I'm mistaken in anything I say.

17 The company and the Union are proposing that in the next  
18 two to three hours, and -- and again, we'll adjourn the -- the  
19 hearing officer will adjourn the proceeding. The company will  
20 put together a listing of the documents that it believes that  
21 the Union has and should produce to it, with the recognition  
22 that the Union will redact. The Union has indicated it will do  
23 its best to turn those documents over in redacted form today.  
24 And then in the morning tomorrow, the company will review them.  
25 We'll get back to the Union at a reasonable hour, since Union

1 counsel are three hours behind us, if there are any  
2 disagreements, and then the parties would resume at 1:00 p.m.  
3 Eastern Standard Time tomorrow on the record.

4 The company also will send a follow-up letter to the  
5 General Counsel. During the argument, I made the point that  
6 the August 9 letter from the General Counsel preceded some of  
7 the developments that have emerged with the whistleblower, so  
8 we will endeavor to synthesize that into a -- either a motion  
9 for reconsideration or a new motion. And then we'll probably  
10 also remind the Regional Director that pending before her is  
11 the application to authorize the whistleblower to testify. So  
12 those are the -- that's the action plan. And then -- and Mr.  
13 Iglitzin can indicate whether I -- I've missed anything.

14 MR. IGLITZIN: I don't believe Mr. Mendelson missed  
15 anything.

16 HEARING OFFICER ZWEIGHAFT: Okay. And Ms. Schneider, do  
17 you wa -- I know you weren't part of the caucus, but do you  
18 have a position or anything to add?

19 MS. SCHNEIDER: I do not. Thank you.

20 HEARING OFFICER ZWEIGHAFT: Okay. Thank you. All right.  
21 As I mentioned off the record, this is a very lengthy recess,  
22 but both parties, both the Union and the Employer, have  
23 represented that they think that in the -- in the interest of  
24 efficiency of the hearing, that this will actually shorten the  
25 hearing quite a bit, and so it's an investment of time today to

1 go off the record when were supposed to -- you know, when this  
2 was going to be a full day, but in the -- if it will focus the  
3 hearing, let us move forward in an efficient manner, and you  
4 know, shorten how much time we're actually on the -- on the  
5 record, I think that that is -- is useful.

6 So I will say that if -- if I adjourn it until 1:00, I  
7 expect us to be able to move forward at 1:00 tomorrow, and if  
8 there -- you know, and have a witness ready to take the stand,  
9 and move forward. I understand you may still -- there may  
10 still be pieces of a petition to revoke pending, but it also  
11 sounds like it will moot much of the petition to revoke --  
12 petitions to revoke that before me right now.

13 Is that -- Mr. Mendelson, I think you said that off the  
14 record, but I'm not sure if you said that on the record. Is  
15 that your understanding?

16 MR. MENDELSON: I -- I probably did. Yes, we believe that  
17 it will narrow the scope of the dispute between the Union and  
18 the company.

19 I -- I -- I will say I'm not -- I'm not trying to unglue  
20 what's, you know, being put together here. We -- we're of the  
21 view that -- that, yes, we -- we should be able to proceed, but  
22 again, part of the problem here has to do with the  
23 authorization by the G.C. or the Regional Director to permit  
24 production of documents by the Board, but -- but I don't want  
25 to overcomplicate this. For the moment, we think this is a

1 good resolution. It certainly is, as Mr. Iglitzin said, it --  
2 it should very substantially narrow the amount of testimony we  
3 need to elicit from the Union, and -- and possibly eliminate  
4 the need for employee testimony, which Mr. Frumkin had made  
5 clear in his opening statement that's an important objective.  
6 I -- I can't make any promises, but we would seek to stipulate  
7 to that to the maximum extent possible.

8 HEARING OFFICER ZWEIGHAFT: Okay. Mr. Iglitzin, do you  
9 want to add anything?

10 MR. IGLITZIN: I do not.

11 HEARING OFFICER ZWEIGHAFT: Okay. Ms. Schneider, do you  
12 want to add anything?

13 MS. SCHNEIDER: No, thank you.

14 HEARING OFFICER ZWEIGHAFT: Okay. So I don't want to  
15 belabor it on the record today. I do want to just ask one  
16 question. I think we talked, and I think it was off the  
17 record, before you -- before the caucus, we talked about  
18 possibly having, I don't want to say a system, but something  
19 where an employee in the record, to re -- for the documents  
20 that come into the record, might be redacted so that we -- we  
21 don't have an employee name, but employees are identified in a  
22 way that the parties will know who they are, and it would be  
23 clear. You know, we might say "employee A" instead of the  
24 person's name.

25 Did -- was that discussed, or is that part of the --

1 MR. IGLITZIN: Yeah.

2 HEARING OFFICER ZWEIGHAFT: -- (audio interference)  
3 forward?

4 MR. IGLITZIN: I think we have an agreement in principle  
5 to try to accomplish that.

6 HEARING OFFICER ZWEIGHAFT: Okay.

7 MR. MENDELSON: Yes. That -- that -- that's clear. We  
8 understand the Union's objective in that regard, and we're --  
9 we're amenable to trying to make that work.

10 HEARING OFFICER ZWEIGHAFT: Okay. All right. That was --  
11 I just wanted to check and see if that was where we were on  
12 that. All right.

13 So is there anything further that you -- that we need to  
14 address today --

15 MR. MENDELSON: I -- I --

16 HEARING OFFICER ZWEIGHAFT: -- on the record?

17 MR. MENDELSON: I -- I -- I probably shouldn't do this,  
18 but I -- I -- I feel I'm compelled to do it, and it's -- it's  
19 unrelated to what we just discussed.

20 HEARING OFFICER ZWEIGHAFT: OKAY.

21 MR. MENDELSON: But when we were off the record, and  
22 what -- and counsel were caucusing among themselves, Ms.  
23 Carter, who I -- I should let speak for herself here, thought  
24 that you may have made a misstatement from our standpoint on  
25 the record before in terms of your understanding of what you do

1 or don't have. So again, I'm -- I'm not sure I heard the same  
2 way, but if -- I'll ask Ms. Carter if she can address the  
3 point.

4 Betsy (phonetic), why don't you go forward with that?

5 MS. CARTER: Yeah. So just that there was a discussion  
6 briefly that Ms. Doud had raised about the deliberative process  
7 privilege, and our assertion of its application here. And I --  
8 and you had said -- I -- I believe you had said that it wasn't  
9 before you in the record in this case, and I was just noting  
10 that the Employer's argument about the -- the proce --  
11 deliberative process privilege in its brief filed in opposition  
12 to the Region's petition to revoke.

13 HEARING OFFICER ZWEIGHAFT: Okay. Yeah. That's -- I -- I  
14 appreciate that. No, what I was saying is I don't have -- I  
15 don't believe that I have a copy of your letter to the GC, and  
16 that is fine. I don't think that it -- that I need that or  
17 should have that, in fact. That was all I was saying, but  
18 thank you for -- thank you for clarifying --

19 MS. CARTER: Thank you.

20 HEARING OFFICER ZWEIGHAFT: -- that. And I know there  
21 are -- there are many papers on the petitions to revoke, so I  
22 think (audio interference) if -- if -- if we -- if -- if we  
23 obviate the need to go through each of those, I think that will  
24 also save quite a bit of time. I had actually expected a lot  
25 of today to be a subpoena day, anyway, so. All right.

1           So with that, I will send -- I will -- I -- one moment. I  
2 will send everybody a Zoom link for tomorrow, okay?

3           Given the time difference, let me just ask the court  
4 reporter, are you going to be our court reporter tomorrow as  
5 well? Do you know?

6           THE COURT REPORTER: I'm not 100 percent sure. Possibly,  
7 but there will definitely be one. I'm just not sure if it will  
8 be me or not. And -- and I just wanted to verify the exhibits,  
9 if we can -- if we need to do that later, perhaps, that were  
10 admitted, just to make double sure we're good on ones admitted  
11 and ones --

12          HEARING OFFICER ZWEIGHAFT: Yeah.

13          THE COURT REPORTER: -- not admitted.

14          HEARING OFFICER ZWEIGHAFT: Okay. We can -- we can do  
15 that, I think, once we're off the record. Perfect, me ask you,  
16 Ms. Court Reporter, if it is you, are you able to stay on  
17 the -- on the Zoom past 5 p.m. tomorrow?

18          THE COURT REPORTER: Oh, yes. Definitely.

19          HEARING OFFICER ZWEIGHAFT: Okay. So we'll plan that we  
20 could go, you know, past 5 p.m. Eastern tomorrow, given the --  
21 you know, given the late start. All right.

22          Anything else before we adjourn?

23          MR. MENDELSON: No.

24          MR. IGLITZIN: Not from the Union.

25          HEARING OFFICER ZWEIGHAFT: Okay. Ms. -- Ms. Schneider?



1 MS. SCHNEIDER: No. Thank you.

2 HEARING OFFICER ZWEIGHAFT: Okay. All right. And with  
3 that, we will resume tomorrow at 1 p.m., and we are off the  
4 record.

5 **(Whereupon, the hearing in the above-entitled matter was**  
6 **recessed at 1:15 p.m. until Wednesday, August 17th, 2022 at**  
7 **1:00 p.m.)**

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C E R T I F I C A T I O N

This is to certify that the attached proceedings, via Zoom videoconference, before the National Labor Relations Board (NLRB), Region 29, Case Number 14-RC-289926, Starbucks Corporation and Chicago & Midwest Regional Joint Board Workers United/SEIU, held at the National Labor Relations Board, Region 29, Two MetroTech Center, , Brooklyn, New York 11201, on August 16, 2022, at 11:27 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.

  
DONNA BOARDMAN

Official Reporter

OFFICIAL REPORT OF PROCEEDINGS  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 29

In the Matter of:

Starbucks Corporation, Case No. 14-RC-289926

Employer,

and

Chicago & Midwest Regional  
Joint Board Workers  
United/SEIU,

Petitioner.

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Place: Brooklyn, New York (Via Zoom Videoconference)

Dates: August 17, 2022

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29

In the Matter of:

STARBUCKS CORPORATION,

Employer,

and

CHICAGO & MIDWEST REGIONAL  
JOINT BOARD WORKERS  
UNITED/SEIU,

Petitioner.

Case No. 14-RC-289926

The above-entitled matter came on for hearing, via Zoom videoconference, pursuant to notice, before **RACHEL ZWEIGHAFT**, Hearing Officer, at the National Labor Relations Board, Region 29, Two MetroTech Center, Brooklyn, New York 11201, on **Wednesday, August 17, 2022, 1:06 p.m.**



A P P E A R A N C E S

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Gabe Frumkin	104	147	150		

E X H I B I T SEXHIBITIDENTIFIEDIN EVIDENCE**Employer :**

E-61

110

155

E-62

112

155

E-64

120

Not Admitted

E-65

125

Not Admitted

E-66

127

Not Admitted

**Union :**

U-1

59

Not Admitted

P R O C E E D I N G S

HEARING OFFICER ZWEIGHAFT: Good morning and good afternoon. We are on the record in the continuation of Starbucks Corporation, case 14-RC-289926. We adjourned yesterday and gave the parties some time to work out some subpoena issues and document production between themselves. And I understand from Ms. Doud that the parties are going to update me on where everything stands.

So Ms. Doud, I'll turn it over to you.

MS. DOUD: Yes, thank you so much. Yesterday, we adjourned the hearing following Union counsel's agreement to produce documents responsive to their subpoenas to narrow the issues in the pending petitions to revoke and potentially limit the number of witnesses and testimony in this hearing.

Per the agreement, Starbucks timely provided a list of eight specific documents, as well as a request for documents related to phone calls on March 31st and April 1st. The list also provided the four original requests from the subpoenas.

Having provided the list at 4:15 p.m. Eastern or 1:15 p.m. Pacific, where Union counsel is located, we awaited the documents Union counsel had promised to produce. None came. Instead, at 12:37 a.m. Eastern today, Union counsel did a bait and switch. They emailed their own list of 16 documents they would produce if certain demands were met, including agreeing to forego all testimony from Gabe Frumkin, Dimitri Iglitzin, or



1 any of the partners Starbucks has subpoenaed and agreeing not  
2 to compel production of any other documents, including other  
3 documents that might arguably be responsive to its subpoenas  
4 duces tecum.

5 Mr. Frumkin's letter appears to omit at least three and  
6 possibly more highly relevant documents, including the April  
7 1st email Mr. Frumkin sent to Board Agent (b) (6), (b) (7)(C) in  
8 response to (b) (6), (b) (7)(C) email regarding (b) (6), (b) (7)(C) inadvertent fumble of the  
9 ballots of Alydia Claypool and Sage Quigley, from which Mr.  
10 Frumkin purposely removed all Starbuck's attorneys and  
11 representatives. In this email, Mr. Frumkin informed (b) (6), (b) (7)(C)  
12 he had already spoken to Board Agent (b) (6), (b) (7)(C) about those  
13 ballots and had already formulated a plan with (b) (6), (b) (7)(C) for  
14 individuals to vote in person.

15 Despite Union counsel's representation on the record that  
16 the Union has nothing to hide, they continue their efforts to  
17 hide documents in this case. Specifically, Union counsel  
18 qualified his list of documents to those "that relate to the  
19 surviving", in an attempt to continue to withhold relevant  
20 evidence to which Starbucks is entitled.

21 Notably, Union counsel continues to ignore objection  
22 number 4, which is one of the 13 objections at issue in this  
23 hearing and which provides, "Region 14 personnel engaged in  
24 election misconduct by communicating with the Union to arrange  
25 for special voting procedures for certain individuals,

1 including allowing people to vote in person rather than wait  
2 for a ballot to be mailed to them." The April 1st email is  
3 undoubtedly related to the surviving objections. While we  
4 argue -- while we will argue the petitions to revoke in more  
5 detail shortly, the requested documents are not only relevant  
6 but admissible under Federal Rule of Evidence 801(d)(2) as  
7 nonhearsay because they meet the definition of statements by a  
8 party opponent.

9 Indeed, an opposing party statement, meaning any statement  
10 made by a party and offered against that party is not hearsay  
11 under the Federal Rules. These statements are traditionally  
12 called admissions of a party opponent, but the declarant need  
13 not admit anything for a statement to qualify as such.  
14 Personal knowledge is not required, and the statement, itself,  
15 may even be predicated on hearsay, and yet is admissible  
16 nonetheless.

17 In short, the Union pulled the wool over everyone's eyes  
18 yesterday. The Union remains steadfast in its efforts to  
19 conceal evidence of their collusion with Region 14, and has  
20 wasted all of our time with a day-long recess for no ostensible  
21 purpose. Sunlight is the best disinfectant. The truth is very  
22 easily found here. Simply take a 15-minute break. Ms.  
23 Schneider, appearing on behalf of the Regional Director, can  
24 review the NextGen system against the letter sent to NLRB  
25 Chairman Board Lauren McFerran, General Counsel Abruzzo, and

1 Inspector General David Berry on August 15th. My understanding  
2 of Ms. Schneider's role, as set forth in Section 11424.4(b) of  
3 the Case Handling Manual, is to offer new materials "if it is  
4 certain, it will not be offered by one of the parties."

5 In other words, as you, Madam Hearing Officer, stated at  
6 the opening of the hearing, Ms. Schneider's role is to  
7 introduce evidence into the record, you as the hearing officer,  
8 should have to decide this case, but the parties have not  
9 provided. Nothing is more elemental here to the decision in  
10 this case than the Board's own emails and documents revealing  
11 misconduct that has occurred. The game must stop.

12 If what Mr. Frumkin said in his opening statement  
13 yesterday is true, and Board agents arranging live voting in  
14 contravention of stipulated election agreements for mail  
15 ballots behind the back of the other party is routine, the  
16 Agency has a much bigger problem on its hands. It's our  
17 sincere hope the evidence of misconduct is brought into the  
18 sunshine to restore the faith of Starbucks, its partners, and  
19 employees everywhere in the Agency and this process. Accuracy  
20 is paramount in conducting any search for the truth.

21 Madam Hearing Officer -- the -- the documents at issue are  
22 relevant to the resolution of the salient issues before you.

23 Madam Hearing Officer, before we do anything else today, I  
24 ask you order the Union to make good on its promise and turn  
25 over the evidence we requested as we are entitled to it.

1 MR. IGLITZIN: Madam Hearing Officer, might I respond?

2 HEARING OFFICER ZWEIGHAFT: Yeah, of course. Before you  
3 do, can somebody just clarify for me, was there anything that  
4 was provided or just a --

5 MR. IGLITZIN: Yeah, if -- if -- if I could respond, Madam  
6 Hearing Officer.

7 MS. DOUD: Nothing was provided.

8 HEARING OFFICER ZWEIGHAFT: Okay. I -- I just wanted to  
9 know. That -- that --

10 MR. IGLITZIN: Yeah.

11 HEARING OFFICER ZWEIGHAFT: -- was my one question.  
12 Please go ahead, Mr. Iglitzin.

13 MR. IGLITZIN: So maybe I'm just old fashioned because  
14 I've been litigating for 35 years, but -- and maybe it's  
15 because I mostly practice in Seattle where there's a degree of  
16 civility that seems to be missing from some of the  
17 presentations made here. But -- but I'm saddened and  
18 disappointed by the tone Ms. Doud has taken.

19 After we broke yesterday to try to work out a stipulation  
20 as to what exhibits could come in, and that would obviate the  
21 need to have the hearing officer have to decide whether she's  
22 going to try to choose to compel counsel to testify or workers  
23 to testify. And Mr. Mendelson was quite open about indicating  
24 that was his desire as well. And we had a very collegial  
25 discussion both on and off the record, as is absolutely typical

1 of hearings of the sort conducted by the Labor Board or any  
2 other court. How can we solve this problem? They've done a  
3 subpoena. We have nothing to hide. So what we did, pursuant  
4 to the discussion yesterday, was the Union spent all day  
5 yesterday going through its records and identified a whole  
6 series of email communications that do relate to the  
7 allegations made by Starbucks in its objections.

8 As we said yesterday, and we'll say again, the Union is an  
9 open book as to its communications with Region 14. We do not  
10 claim that they are privileged in any way. We don't dispute  
11 that they are relevant to Starbucks' purported theory, however,  
12 dubious that theory is about collusion. But our understanding  
13 was that we were precisely supposed to be trying to work out  
14 the basis for stipulation.

15 So what we sent and we are going to submit to the hearing  
16 officer as Union Exhibit 1, a copy of the communication we've  
17 sent, because, obviously, I'm a little miffed that our efforts  
18 to move this hearing forward and accommodate Starbucks being  
19 characterized yet more language really that outside of Congress  
20 I don't hear in my -- in my practice that normal people use  
21 when they're talking about professional colleagues and  
22 attorneys for -- for opposing parties. It's just not -- it's  
23 just not a real thing that normally happens in a normal --  
24 normal world.

25 So what do we do? We identified every email we could find

1     between Mr. Frumkin and Region 14 from the date the stipulated  
2     election agreement was entered into to the date of the  
3     election, which we understand to be the relevant time period.  
4     We confirmed that Mr. Frumkin was the only point of contact  
5     between the Union and Region 14.

6             I personally did not send or receive any emails, although  
7     I was cc'd on some of them. We confirmed that the dates and  
8     times of phone calls that Starbucks alleged took place on this  
9     matter were accurate. We clarified that Mr. Frumkin does not  
10    have any -- and the Union has no documents or notes reflecting  
11    the content of those phone calls. So we have nothing to turn  
12    over with regard to that.

13            Mr. Frumkin also doesn't have any independent recollection  
14    now of the content of those phone calls. We handle a  
15    substantial number of election petitions filed by many of the  
16    hundreds of Starbucks workers store -- stores where Starbucks  
17    workers have filed for the Union. And we don't remember these  
18    particular phone calls. Mr. Frumkin doesn't, in particular.  
19    And we proposed in this letter, which we understood to be the  
20    whole point of the proposed stipulation was that if we provided  
21    Starbucks with all the communications we had with Region 14,  
22    that Starbucks would agree, it no longer needed to seek to  
23    compel Mr. Frumkin or I to testify, and no longer need to  
24    compel the workers to testify. And obviously, Starbucks has  
25    its thing about trying to get somebody from Region 14 to

1     testify, and that's a separate discussion.

2             We sent this last night.     There were a number of  
3     responses that I anticipated.     One was that Starbucks would  
4     say, oh, you know, we through our leaker, who they incidentally  
5     call a whistleblower, but he hasn't blown a whistle, or she  
6     hasn't blown a whistle and simply leaked documents.     So we want  
7     to use the proper -- proper language for this person that they  
8     have not disclosed.     But if Starbucks wanted to say, well, we  
9     believe that there is another email that exists that you didn't  
10    identify in your list, I -- that is a completely normal  
11    conversation to have.     And if they had done that 7 a.m. this  
12    morning, Seattle time, 10 -- 10 a.m. East Coast time, we would  
13    look through our records again and try to understand, did that  
14    email slip through our -- slip through the cracks?     Maybe we  
15    could find it; maybe we can't -- can't.

16            Normal attorneys wouldn't accuse another attorney of  
17    trying to play some kind of game if, in an effort to produce  
18    documents, it appeared that a document was overlooked.     That's  
19    just not anyone's lived experience and the normal interaction  
20    with opposing counsel.     And we will, in fact, if there's an  
21    email that we apparently did not ident -- identify, we'll look  
22    for it.     That's why we gave Starbucks a list of all the emails  
23    we did identify.     This is what we think is the universe of  
24    responsive emails.     Implicit in that is, if you think we  
25    overlooked something, let us know and we will provide that as

1 well.

2 It was also possible that Starbucks would respond by  
3 saying, yeah, turning over all those documents isn't good  
4 enough. We're still going to want to try to make Mr. Frumkin  
5 testify on this topic or that topic, or here's why we still  
6 need to have the workers testify. We were proposing a  
7 stipulation, which I thought was what we were trying to do, and  
8 I fully expected Mr. Mendelson to potentially come back and  
9 say, well, we don't like the stipulation exactly as you  
10 proposed it. We want to tweak it.

11 The one thing that only fleetingly passed through my mind  
12 was the idea that Starbuck's counsel would come back -- would  
13 not respond for all the hours that they were allotted this  
14 morning from last night when they got the email to going on the  
15 record today, wouldn't do us the courtesy of saying even --  
16 there must have been some misunderstanding because I thought  
17 you were going to actually give us the documents, and instead,  
18 you gave us the list of documents. At which point I would have  
19 said, oh, yeah, I think that was a misunderstanding. We were  
20 talking about what we would give you. We weren't committing to  
21 give them to you until we had a stipulation worked out. I just  
22 don't understand why someone from Starbucks -- from Littler  
23 didn't reach out to us and say, hey, let's talk about this.  
24 Your proposed stipulation is not acceptable for the following  
25 reasons.



1           So here we are. We have made a proposed stipulation. We,  
2   you know, are happy to address the petitions to revoke on the  
3   merits, but I still don't understand why we represent we're  
4   going to turn over every communication our firm had with Region  
5   14, why Starbucks thinks it needs to compel workers to come in  
6   and testify, and why Starbucks potentially still thinks it  
7   wants to try to make counsel for the Union testify, because I  
8   simply don't understand what the relevance theory is. But I  
9   thought we were trying to work out stipulation. We're happy to  
10   turn over all these documents when we get the stipulation  
11   worked out. Obviously, we have raised objections to turning  
12   those documents over, but as part of the stipulation, we're  
13   happy to do it.

14           So -- so here I am, more in sadness than in anger going,  
15   really, we have to play this kind of abusive game, or can we  
16   move forward and figure out a process and agreement by which we  
17   turn over the documents that Starbucks has asked for.  
18   Representing, the only documents we're not turning over that  
19   are even arguably encompassed in their subpoena are attorney-  
20   client privilege communications, and work product.

21           I'm not going to turn over an email that I sent to Mr.  
22   Frumkin or that Mr. Frumkin sent to me, and that will have to  
23   go to the hearing officer. But I thought what this was all  
24   about, this great grand big lie conspiracy, was about collusion  
25   between the Union and Region 14. And the evidence that is

1     punitively relevant to that is the emails between the Union and  
2     Region 14, and we're prepared to turn those over. And that's  
3     what the conversation is about.

4             And again, I'm just a little ticked off that our effort to  
5     work out the stipulation is being used to score political  
6     points in some audience, not the hearing officer, about the  
7     Union tried to pull the wool over somebody's eyes. I don't  
8     litigate that way. Nobody I normally work with litigates that  
9     way, including many counsel for employers.

10            And I guess I would ask the hearing officer, take a look  
11    at the stipulation that we proposed, that we go off the record  
12    so the hearing officer can take a look at that, and then maybe  
13    we can see if there is a substantive response to that  
14    stipulation and what Starbucks thinks is missing or what tweaks  
15    they might want to make, so we actually can move forward  
16    without making the workers miss work and come in and testify  
17    about things they shouldn't be forced to testify about, about  
18    their support for the Union, or the highly extraordinarily  
19    unusual idea that Starbucks can call Union counsel to testify  
20    at this hearing. That -- that's -- that's what I have to say  
21    about this.

22            HEARING OFFICER ZWEIGHAFT: Okay. So I have a couple of  
23    questions. And I take it that Ms. Doud would like to respond,  
24    but I'd like to ask a couple of questions first.

25            I will say, my understanding was that yesterday and this

1 morning were about the production of documents, and I did not  
2 understand that to be a question that had to have a, you know,  
3 particular stipulation for the record.

4 And I believe my understanding of Mr. Mendelsohn's  
5 representation on the record was that they would hope that, you  
6 know -- that the production might obviate -- or you know, would  
7 hopefully obviate the need for some of the testimony. But I  
8 don't know that counsel -- you know, any of the counsel for the  
9 Employer, I believe, was Mr. Mendelson and Ms. Doud, who both  
10 spoke to this yesterday, made that representation that it  
11 absolutely would, and I don't know how they could until they  
12 see the documents.

13 So I think that that's -- you know, I -- I'm not sure  
14 where that came from. That was -- that was certainly not my  
15 understanding of what -- of what yesterday and this morning  
16 we're going to -- to be. And I did expect that there was going  
17 to be production that happened before we went on the record  
18 today. And that that would also, you know, potentially  
19 obviate, or -- I think that I expected, probably would obviate  
20 me ruling on the petitions to revoke. If that's not going to  
21 be the case, and I need to rule on those, then we'll go forward  
22 and we'll, you know, address those.

23 I -- I don't know that I think it's appropriate to hold  
24 everything up over a stipulation about, you know, subpoenas ad  
25 testificandum until people have seen the documents. And I --

1     you know, I don't even think I could rule on -- on -- on one of  
2     those things being dependent on the other at this point. I  
3     think, you know, we'd have to see what's in the record.

4             So I would ask Mr. Iglitzin, you just made reference to  
5     certain dates, I think you said, from the signing of the stip  
6     to the election. I'm just wondering, could you clarify what  
7     dates your -- your understanding of what those dates are?  
8     So -- just so I know.

9             MR. IGLITZIN: Sure. I'm actually going to ask Mr.  
10    Frumkin to answer that question. Let me also say, frankly,  
11    I -- it may have been a misunderstanding on my part. I seem to  
12    recall us talking about stipulations, and that's what I thought  
13    we were talking about.

14            But frankly, if Starbucks had called me, I would have  
15    woken up and -- and looked at that 7 a.m. this morning. And I  
16    mean, at this point, I'm actually prepared to turn over all  
17    those exhibits, and I'm going to direct that they be turned  
18    over. As I've said, we have nothing to hide. I'm happy to  
19    turn over these emails.

20            We thought that the point was to try to do an overall  
21    stipulation. But let me represent it right now, we are now in  
22    the process of -- and since I've just been communicating with  
23    my staff, we will turn over all the emails that we listed in  
24    our offered stipulation so that we can get past this. That was  
25    a -- perhaps a misunderstanding on my part of what the -- the

1 plan was. And again, if Starbucks had let me know this morning  
2 that they really expected to get those exhibits, not just a  
3 list of the exhibits -- of those emails, not just a list of  
4 these emails, we could have saved a lot of -- a lot of grief.

5 I wanted to ask Mr. Frumkin if he can answer your question  
6 about the actual dates.

7 HEARING OFFICER ZWEIGHAFT: Mm-hmm.

8 MR. FRUMKIN: So in specific response to that, the dates  
9 were February 24th for when the stipulated election agreement  
10 was signed --

11 HEARING OFFICER ZWEIGHAFT: Now --

12 MR. FRUMKIN: -- and April 8th, which is when the vote  
13 count occurred.

14 HEARING OFFICER ZWEIGHAFT: Okay. Thank you. Thank you.

15 MR. FRUMKIN: You're welcome.

16 HEARING OFFICER ZWEIGHAFT: Okay.

17 Ms. Doud, do you -- do you want to respond?

18 MS. DOUD: I think you hit the highlight of what I was  
19 going to say. There was no misunderstanding. Everybody knew  
20 what was on the record, what the parties were supposed to do.

21 We had two to three hours to provide our list of documents  
22 to Union counsel. We did that. They were supposed to turn  
23 over the documents. There was no agreement that they would  
24 send us a list of what they thought was appropriate. The  
25 hearing officer understood and everyone else understood. It's

1 just a shifting story and more games.

2 And I have been doing --practicing law for over two  
3 decades. So I've been practicing a long time, too, Mr.  
4 Iglitzin, and I have never seen anything that has happened like  
5 it has happened in this case.

6 HEARING OFFICER ZWEIGHAFT: Okay. So I am -- I am just  
7 going to request -- I understand that this has been a hard-  
8 fought case, and I understand that it's contentious. I would  
9 ask that we try to, you know, refrain from making comments  
10 about how each other practice on the record. Okay? I don't  
11 think that's a productive addition to the record. So I'm going  
12 to request that the parties refrain from doing that on both  
13 sides. All right? And I would appreciate it if people abide  
14 by that.

15 All right. So my understanding is right now that  
16 documents are in the process of being produced. I don't know  
17 how voluminous. I don't have a sense of -- you both have a  
18 sense, probably, of how much we're talking about.

19 MR. IGLITZIN: It's not particularly voluminous. It's  
20 just a bunch of email, you know, strings.

21 HEARING OFFICER ZWEIGHAFT: Okay.

22 MR. FRUMKIN: Yeah, there are 16 documents containing  
23 multiple emails in most cases each. So we're going to be able  
24 to email those presently to opposing counsel and the hearing  
25 officer.

1 HEARING OFFICER ZWEIGHAFT: Okay. Well, I don't think you  
2 need to send them to me. They're not -- they're not exhibits  
3 at this point. If this is document production, I don't need to  
4 be copied on it.

5 MR. IGLITZIN: We -- we do want them to go into the record  
6 because it relates to the accusations made and when -- if  
7 Starbucks, for some reason, thinks that they still are trying  
8 to enforce their -- their subpoenas, then you're going to need  
9 to be able to review them.

10 HEARING OFFICER ZWEIGHAFT: Well, that's fine. I mean,  
11 first of all, subpoena enforcement would not happen. They'd  
12 have to go into court to enforce the subpoenas. I can  
13 (indiscernible, simultaneous speech) --

14 MR. IGLITZIN: I mean, just --

15 HEARING OFFICER ZWEIGHAFT: Hang on.

16 MR. IGLITZIN: -- (indiscernible, simultaneous speech)  
17 ruling from you.

18 HEARING OFFICER ZWEIGHAFT: I'm still talking. They would  
19 need to go into court to enforce them. I will make a ruling on  
20 the petition to revoke if I need to.

21 But at this point, if they're not going -- I mean, if you  
22 want to email them to me, you can email me. I'm not going to  
23 review them in any independent fashion in terms of document  
24 production at this point. They're not exhibits. If the  
25 Employer comes back and says that they're aware of something

1     that's missing and that they don't think that the production  
2     has been complete enough, then we can talk about that. I think  
3     that that would be the -- the way that conversation would go.

4             MR. IGLITZIN: That's fine.

5             HEARING OFFICER ZWEIGHAFT: So Ms. Doud, I take it you  
6     would like to review the documents before we go forward?  
7     Any -- let me ask you this, like, once you review, what would  
8     be your next step in terms of going forward; do you have a  
9     witness ready afterwards, or what do --

10            MS. DOUD: We need to see what they're producing and --  
11     and check it against our list. And then I think that we may  
12     still have PTRs to argue.

13            HEARING OFFICER ZWEIGHAFT: Right. That -- I -- I agree  
14     with that. Okay. So how long -- how long before the documents  
15     are produced and how long -- if they're not voluminous, and you  
16     have -- you discussed a list, I assume that you can take a look  
17     at them, that, you know, would be relatively quick.

18            How long before they're produced?

19            MR. IGLITZIN: I think they're being produced as we speak.

20            HEARING OFFICER ZWEIGHAFT: Okay.

21            Ms. Doud, how long -- it's 1:30. How long do you think  
22     you need to review?

23            MS. DOUD: I saw Jedd Mendelson come off. I don't know if  
24     he had something he wanted to say.

25            MR. MENDELSON: (Indiscernible, simultaneous speech)



1 answer the question. That's okay.

2 MS. DOUD: If we had -- I don't know. They said there's  
3 16 emails, but I don't know how many threads there -- like how  
4 (audio interference) they are. So I would say maybe 45  
5 minutes, and if we needed longer, we could let everybody know.  
6 (Indiscernible, simultaneous speech) --

7 HEARING OFFICER ZWEIGHAFT: Okay. Thank you.

8 Mr. Mendelson, did you want to say anything?

9 MR. MENDELSON: Well, Ms. Doud's correct. I actually was  
10 on mute, and I was trying to say something before and then  
11 realized I was mu -- muted.

12 HEARING OFFICER ZWEIGHAFT: Okay.

13 MR. MENDELSON: Separate -- separate from this matter that  
14 you now oversee -- this may not be the moment you want to do  
15 it, but we wanted to, also on the record, articulate our view  
16 about what we think we understood from you yesterday with  
17 respect to the petitions to revoke by the Region.

18 HEARING OFFICER ZWEIGHAFT: Mm-hmm.

19 MR. MENDELSON: You'll -- you'll correct -- you'll correct  
20 me if I have misunderstood, but I thought that you were  
21 indicating that because the Regional Director has not permitted  
22 the whistleblower to come forward and because the General  
23 Counsel has not given consent to have the duces tecum responded  
24 to by Region 14 and any Region 14 personnel testify, I  
25 thought -- or we thought that that meant that you felt you are

1 essentially in a -- not a position to address the merits of --  
2 of that petition to revoke filed by Region 14 and our response  
3 to it. But we did some research last night -- and again,  
4 you'll stop me if I even misunderstood your tenor and intent,  
5 or you don't want to discuss this now. But we believe you have  
6 both the power and obligation to -- to address those things.

7 HEARING OFFICER ZWEIGHAFT: Okay. You can -- you can  
8 continue and make your statement on this, and then I can -- we  
9 can -- if we're taking a break, I'll take a look at anything  
10 that you cite.

11 MR. MENDELSON: Right. That's -- that's -- that's why I  
12 thought it made sense to do it now. So we think you have the  
13 power and the obligation to do this under 102.65 of the Board's  
14 rules and regulations, motions to revoke subpoenas delegated to  
15 the hearing officer and under 102.66(f), if a petition to  
16 revoke is filed with the Regional Director and it's referred to  
17 rule -- to the hearing office to rule on, then of course it's  
18 yours to rule on as well. That's the situation we're in where  
19 the Regional Director has referred it to you.

20 There's -- there's an abundance of court authority that  
21 indicates that despite the denial under 102.118 by the General  
22 Counsel or the Regional Director of -- of the intent by a  
23 Respondent to secure by subpoena information. The courts have  
24 indicated that it is the hearing officer's responsibility to  
25 address the merits of any privileges or other arguments made in

1 support of the petition -- petition to revoke. One case is  
2 NLRB v. Heath, H-E-A-T-H, T-E-C Division/San Francisco 566 F2d.  
3 1367 cert. denied 439 U.S. 832.

4 There, the Ninth Circuit explained, even where, as in the  
5 present case, the General Counsel denied permission --  
6 originally denied permission based on an established privilege,  
7 we are convinced that the hearing officer is required to make  
8 an independent evaluation of privilege before quashing a  
9 subpoena.

10 There's another decision. I don't have the full name in  
11 front of me, but it's Seine, S-E-I-N-E, 374 F2d. 974 at 980-81,  
12 Ninth Circuit 1967 cert. denied 389 U.S. 913. The -- the  
13 hearing officer here made no such finding, and that was clearly  
14 an error.

15 There's another cite NLRB v. -- I think it's Family House  
16 and Adult -- not -- I'm not sure the full name, 141 --

17 HEARING OFFICER ZWEIGHAFT: I have that case. It was in  
18 your brief.

19 MR. MENDELSON: Okay. 141 F.3d 1177, so I won't continue  
20 on it. And then, lastly, J.H. Rutter v. NLRB 473 F.2d, 223 at  
21 232-33 Fifth Circuit 1973.

22 HEARING OFFICER ZWEIGHAFT: I --

23 MR. MENDELSON: So I'll say no more. We believe that it  
24 is necessary for you to address that petition to revoke from  
25 the Region and our response to it.

1 HEARING OFFICER ZWEIGHAFT: Can you please give me the  
2 first cite that you read again, the 566 F.2d. I didn't get the  
3 page memo.

4 MR. MENDELSON: Yeah, sorry about that. I did -- on 566  
5 F.2d, 1367, I didn't not have a jump cite handy.

6 HEARING OFFICER ZWEIGHAFT: That's okay. 1367?

7 MR. MENDELSON: 1367, yes.

8 HEARING OFFICER ZWEIGHAFT: Thank you. Okay.

9 MR. IGLITZIN: Madam Hearing Officer.

10 HEARING OFFICER ZWEIGHAFT: Go ahead.

11 MR. IGLITZIN: I do have one follow-up. This will be the  
12 documents that were in dispute have been sent. I did also want  
13 to clarify that I'm not sure why Ms. Doud appear to believe  
14 that we had failed to identify a particular email from April 1.  
15 It's actually on the list of emails that we identified and it's  
16 included in the emails that we just produced.

17 HEARING OFFICER ZWEIGHAFT: Okay, well, thank you for  
18 clarifying that.

19 MS. DOUD: The time on your list is not the same time. So  
20 we'll look at what you've produced and see if it's there.

21 MR. IGLITZIN: Great Thank you.

22 HEARING OFFICER ZWEIGHAFT: Okay. All right. Okay. So  
23 it's 1:37. Let's come back at 2:30. Well, okay. So it's 1:37  
24 my time in New York. Let's come back at 2:30 New York time.  
25 That should give everybody ample time to go over the documents.

1 Ms. Schneider may also want to take a look at the cases that  
2 were just cited. I assume the Regional Directors might have a  
3 position on that. So that'll give everybody a chance to read  
4 over that. Is there anything else that, you know, we should be  
5 aware of before we go off the record?

6 MR. MENDELSON: Not from the company's standpoint.  
7 Dimitri, do you know, it was sent to the three of us, Betsey,  
8 Kim and myself?

9 MR. IGLITZIN: I assume so. Let me look. Yes, it was.

10 MR. MENDELSON: Okay. It hasn't landed yet, but I imagine  
11 it will shortly.

12 HEARING OFFICER ZWEIGHAFT: Okay.

13 MR. IGLITZIN: If, for some reason, you don't get it, give  
14 me a call or indicate it in some form to me. We'll make sure  
15 you get it.

16 MR. MENDELSON: Okay, thank you.

17 HEARING OFFICER ZWEIGHAFT: All right. Thank you,  
18 everybody. Off the record.

19 (Off the record at 1:39 p.m.)

20 HEARING OFFICER ZWEIGHAFT: Okay. So we are back on the  
21 record. The parties have had -- well, the Employer, I think,  
22 has had time to review what was produced by the Union; is that  
23 correct?

24 MR. MENDELSON: Yes, that is correct, and we do believe  
25 that what the Union has sent this afternoon is consistent with

1     what we had identified as -- what we understood that they would  
2     be able to produce.

3             HEARING OFFICER ZWEIGHAFT:   Okay.

4             MR. MENDELSON:   I do have one quick comment.   I didn't get  
5     a chance to talk to Ms. Doud or Ms. Carter about this.   I was  
6     just quickly looking back at the subpoena, and at the risk of  
7     being provocative, the one thing I think that we would  
8     potentially still have interest in, although I don't have any  
9     idea whether there is anything in writing, Mr. -- I don't want  
10    to say Dimitri's name wrong.   Mr. Iglitzin said that the  
11    relevant period of -- Mr. Frumkin said relevant period was  
12    February -- I think he said February 2 through April 8th, April  
13    18, the vote count date.   But the subpoena went to the present.  
14    And I guess we would be interested in communications, if any,  
15    between the -- between Mr. Frumkin and Mr. Iglitzin and Region  
16    14 or the NLRB insofar as such communications would not be  
17    privilege.

18            HEARING OFFICER ZWEIGHAFT:   Well, I would say that  
19    anything that occurred after the vote count could not have  
20    affected the outcome of this election.   We generally don't  
21    extend past the count in post-election cases just for that  
22    reason.   So I don't know, you know, unless there's something  
23    specific that you think, you know, would -- so my --

24            MR. MENDELSON:   I wasn't heading in the direction I've led  
25    you.   I apologize.   I accept everything you just said as being

1 an accurate explication of what would not be proper fodder.  
2 What I'm really meaning to say is anything after the vote count  
3 that would be relevant or pertinent to things that happened  
4 prior to the vote count. So by way of example, the objections  
5 of files or emails or text messages or communications between  
6 Mr. Frumkin or Mr. Iglitzin and any of the Region 14 personnel  
7 then -- about everything through the vote count, that would be  
8 pertinent as well.

9 MR. IGLITZIN: I'm happy to represent that no such  
10 documents exist.

11 MR. MENDELSON: Okay.

12 HEARING OFFICER ZWEIGHAFT: Okay. So let me just ask,  
13 where does that leave us on the subpoenas, so that two duces  
14 tecum to Mr. Iglitzin and Mr. Frumkin now?

15 MR. MENDELSON: So sorry to interrupt. I can be  
16 efficient, I think. I believe that we are satisfied that the  
17 two Union lawyers at issue have made production satisfying the  
18 duces tecum served on both of them. The larger question I  
19 imagine you'd be interested in is what our intentions are with  
20 respect to questioning Mr. Frumkin. For the moment, we accept  
21 Mr. Iglitzin's representation that he doesn't have firsthand  
22 knowledge of much of anything that would be pertinent here. So  
23 for purposes of discussion, I'll accept that. I would say to  
24 you that we believe that we should examine Mr. Frumkin. I know  
25 Mr. Iglitzin has described that is unusual. I respectfully

1 disagree. Lawyers for companies and unions testify in these  
2 proceedings all the time if they are actors, which in this  
3 instance Mr. Frumkin was. And I can represent to you that if I  
4 were to conduct this examination, I think it would be a little  
5 bit -- there'd be some hiccups in that. You know, I haven't  
6 been able to integrate fully the documents into the outline I  
7 had prepared. But I could represent you, I think it would be a  
8 fairly efficient examination. It would be entirely fact based.  
9 I'm not interested in Perry Mason or rhetorical flourishes. It  
10 would just be to fill in blanks and make sure I -- make sure  
11 the record is complete with respect to what the Employer is  
12 seeking to establish, including his involvement during the  
13 period from February 2nd to whatever date is applicable through  
14 the vote count. So that would be our ambition. I don't think  
15 it would be very time consuming. It's always tricky to project  
16 these things. I'm going to hypothesize. It might be an hour,  
17 especially because of hiccups and just getting the documents  
18 together. I would assume that he would be a hostile witness so  
19 that I can ask him very direct questions rather than having to  
20 worry about foundations. So that would be how we would propose  
21 to proceed. Once the other petitions to revoke are resolved.

22 HEARING OFFICER ZWEIGHAFT: I mean, I take it that at  
23 least on some of these, you have some of your own witnesses as  
24 well who are going to be testifying. You have direct -- you  
25 have --



1 MR. MENDELSON: Well --

2 HEARING OFFICER ZWEIGHAFT: He's not going to be your only  
3 witness.

4 MR. MENDELSON: Well, no, he's not the only witness, but  
5 in the interest of efficiency, I think if Mr. Frumkin was  
6 examined, it would take care of a lot of things. For example,  
7 no one's disputing that there's a stipulation here. Some  
8 witness somewhere along the way here is probably going to just  
9 acknowledge or confirm the stipulation and it's admitted into  
10 evidence. I don't think that's the fulcrum of his testimony.  
11 For us, it's simply walking through a series of things that  
12 relate to these emails. The representation has been made that  
13 he doesn't recall phone calls, but there's an opportunity to  
14 refresh his recollection here, and if his recollection is not  
15 refreshed, then we need the record to reflect that. So again,  
16 my point simply is, once the petitions to revoke are concluded,  
17 we would propose that we examine Mr. Frumkin and I do so as  
18 efficiently as possible. Also, subject to how the petitions to  
19 revoke are decided, even if, if theory, we were to have the  
20 right to question employees, it is plausible to me, following  
21 the conclusion of Mr. Frumkin's examination, we might be able  
22 to significantly contract that. I'm not suggesting we won't  
23 perhaps want to question at least one, maybe two of the  
24 employees, but we would certainly not have to question all of  
25 them is my assessment at the moment. And if I conclude that we

1 have didn't to examine any, or just one, then that's what we  
2 would do. We're not looking to prolong this any more than  
3 anybody else. We'd like to box this up and move on without --  
4 excuse me for saying it that way. Without prejudice to our  
5 position and it's not even without prejudice. We obviously  
6 need what we believe we're entitled to from Region 14, and that  
7 may bear on the need to have the whistleblower testify. Of  
8 course, if we have documents from Region 14 and one or two  
9 witnesses then -- from Region 14, we may not need anything more  
10 than that.

11 MR. IGLITZIN: And then, Hearing Officer, if I may be  
12 heard on this.

13 HEARING OFFICER ZWEIGHAFT: Yes, yes.

14 MR. IGLITZIN: You know, I truly, respectfully, disagree  
15 with Mr. Mendelsohn about how common it is to have one party be  
16 able to call the other party's attorney to testify on something  
17 that goes to the heart of the case. I've seen attorneys call  
18 themselves to testify to authenticate a document or something,  
19 but I think it's unprecedented -- almost unprecedented, and  
20 highly irregular. And what I would ask is the hearing officer  
21 to ask for a detailed offer of proof from Starbucks to what it  
22 is they believe or intend to seek to elicit from Mr. Frumkin.  
23 Because as I understand the objections, the claim is that there  
24 was improper communications between our office and Region 14,  
25 and we've not provided all of those communications. And Mr.

1 Frumkin, as an officer of the court, represents he doesn't  
2 remember the contents of the phone calls and there are no major  
3 documents relating to those calls. So we don't need Mr.  
4 Frumkin to testify to authenticate the emails because we're  
5 stipulating to that. And Mr. Mendelson doesn't claim that he  
6 intends to ask Mr. Frumkin questions like, why did you send it?  
7 Because the emails all speak for themselves. It's what he was  
8 trying to accomplish. I am concerned that this is an effort to  
9 further a narrative that has nothing to do with the facts at  
10 issue in this case, for Mr. Mendelson to be able to question a  
11 Barnard, Iglitzin, & Lavitt attorney under oath.  
12 So again, I can't, without knowing more, say there might be  
13 some line of questions that I will say, okay, that's  
14 appropriate to pose to Mr. Frumkin, but it is wholly unclear to  
15 me what those questions might be, since the only thing that he  
16 can logically say is yes, I sent that email. Yes, I received  
17 that email. We're already stipulated to that.

18 MR. MENDELSON: So if I could just try to help, like,  
19 advance this.

20 HEARING OFFICER ZWEIGHAFT: Yes.

21 MR. MENDELSON: What occurs to me is the most central  
22 question is -- and it's not apparent to me from my quick  
23 reading of the emails that I know the answer to this -- whose  
24 idea was it to permit employees to come into the subregional  
25 office and vote there. This seems to have evolved from having

1 people come to the office to pick up ballots into or morphed  
2 into they can come in and cast ballots there. I have no idea  
3 whose idea it was. And it could be that, at this point, Mr.  
4 Frumkin doesn't remember. I don't know. I can't prejudge  
5 that. Now, that's a very core and central question. I don't  
6 want to pretend that every question is of that gravity. I just  
7 think that in the space of an hour, if I was able to ask him  
8 questions again, I represent they'll be fact-based questions,  
9 no Perry Mason moments here. It will help us to build a  
10 complete record. It will also, frankly, inform the  
11 determination that we think is obvious that Region 14 should be  
12 complying with the subpoena duces tecum, and having witnesses  
13 present. Because, for example, if Mr. Frumkin doesn't recall  
14 who conceived the idea of having employees vote in person, then  
15 presumably we need someone or some ones from Region 14 to  
16 testify to that, unless there are documents that speak to that.

17 MR. IGLITZIN: And the answer to any such question to Mr.  
18 Frumkin is going to be the emails speak for themselves. Mr.  
19 Frumkin doesn't have anything to add because he doesn't  
20 remember the content of phone calls, which, in fact, as I  
21 recall, happened later than emails in any event. So there is  
22 no -- nothing to be gained because we are representing that the  
23 entirety of the communication between our firm and Region 14 is  
24 contained in those emails. So there's literally no -- I think  
25 it is not sufficient to meet the burden of requiring Mr.

1 Frumkin to testify, if the question is whose idea was it, and  
2 the answer is going to be, I direct your attention to the  
3 emails and the emails speak for themselves.

4 MR. MENDELSON: Well, but the emails don't answer that  
5 question. And if he doesn't remember, he doesn't remember.  
6 But I think what I need to do is to make a record because it  
7 bears on, as I've said, the petition to revoke from Region 14.  
8 That isn't your problem. That's my problem. But nonetheless,  
9 so I -- you know, I'm not aware of why counsel for the Union,  
10 any more than counsel for the Employer, if the Employer was an  
11 actor, would not have to testify. And what I try to do is  
12 provide assurances today that the questioning will be fact  
13 based. This is unprivileged stuff. I'm not intending, at this  
14 point, to ask questions that relate to Dimitri's conversations  
15 or communications with Mr. Frumkin. You know, I heard his  
16 initial point, and I think that we will refrain from going  
17 there, again, so we don't have to have sparring about things  
18 that ultimately aren't necessary. In the absence of a  
19 privilege and in the absence -- it's plainly relevant. In the  
20 absence of an explanation as to why we should not be able to  
21 make sure the record is complete, I submit to you that we  
22 should -- we shouldn't have to really quibble about this. We  
23 should have an opportunity to question him. I've made  
24 representations about how I'll do it. If the Union or you  
25 think that I'm deviating from what I represented, you'll tell

1 me and provide appropriate instruction. And that's -- that's  
2 our  
3 viewpoint on this at this point.

4 MR. IGLITZIN: And I would just --

5 HEARING OFFICER ZWEIGHAFT: Can I ask the question? Mr.  
6 Mendelson, do you think that you could identify for us, you  
7 know, the specific areas? Can we have, you know, a parameter  
8 of -- you know, and maybe this is clearer to everybody else  
9 because you've seen the emails and I haven't. I assume that I  
10 will be seeing them as they come in, and that's fine. But is  
11 there some way that we could define the parameter of the  
12 examination? I know you've said it's fact-based. You're not  
13 going to ask about privilege. That's fine. We -- that would  
14 always draw an objection anyway, but you know, can we define --  
15 and obviously, Mr. Iglitzin has represented that he's not going  
16 to -- that, you know, you don't need him -- you don't need Mr.  
17 Frumkin's testimony to authenticate anything because they're  
18 coming in -- because the -- they're stipulating to the  
19 authenticity of the emails. They'll -- I take it you would --  
20 Mr. Iglitzin, that you would just stipulate them into the  
21 record, if that is what the Employer wanted. Is that accurate?

22 MR. IGLITZIN: That's correct, subject to some discussion  
23 about redactions that we've previously had.

24 HEARING OFFICER ZWEIGHAFT: Okay, right.

25 MR. IGLITZIN: And I will say before the Hearing officer

1 rules on this motion, I will ask the hearing officer to look at  
2 the emails. But I want to, again, represent very clearly. Mr.  
3 Frumkin has no personal knowledge of conversations with Region  
4 14, other than what is contained in those emails, and we're  
5 making that representation on the record as officers of the  
6 Court. So it remains it is not appropriate for Mr.  
7 Mendelson -- sorry, for Starbucks -- I didn't mean to  
8 personalize it -- to attempt to, you know, cross-examine Mr.  
9 Frumkin about things that he has already represented he has no  
10 knowledge of. This is basically the same as a party saying we  
11 have looked for responsive documents to a subpoena, and we  
12 can't find any others. The other side doesn't say, well, we  
13 want to go to your office and look, or the Union hall, and look  
14 ourselves just to test whether that's really true. It doesn't  
15 happen at these hearings. We've represented that the documents  
16 speak for themselves. Those are the communications. Mr.  
17 Frumkin has nothing to add. And there are professional,  
18 ethical ramifications, rules of professional conduct, all kinds  
19 of issues that come into play when one party tries to turn the  
20 other party's advocate into a witness, which simply means that  
21 unless there is an articulable, relevant question to be posed  
22 to Mr. Frumkin, the hearing officer should rule that it's not  
23 appropriate. This whole thing, while it may not take more than  
24 an hour, that's not the point. I have not yet heard -- I would  
25 like to see in writing -- I would ask the hearing officer to

1 ask to see in writing the topics and the offer of proof as to  
2 what Starbucks counsel believes Mr. Frumkin might have that is  
3 relevant to this hearing, because far as I can tell, the emails  
4 speak for themselves, and they are the only thing that speak on  
5 this topic.

6 MR. MENDELSON: So I don't have a written offer of proof.  
7 I didn't anticipate this being an area where I had to have one  
8 of those framed. I will say this. I've never heard an  
9 objection or a privilege asserted based upon the fact that  
10 somebody holds the status as a lawyer or because somebody has,  
11 let's call them, professional or ethical concerns. As I said,  
12 Mr. Frumkin acted in a capacity in this endeavor where he's a  
13 fact witness. The fact that I seek to elicit really relate to  
14 the scope of these emails. But the emails may speak for  
15 themselves, but they don't cover the entirety of this. I use  
16 the best example, not to mean to be glib, but the emails don't  
17 tell us who suggested in-person voting. There are other  
18 questions, which I'd have to stop and think of, because as we  
19 examine him, I have an outline, but some of these things just  
20 flow from the questioning and the answers that I would be  
21 posing as well. So I can -- you know, if we want to take a  
22 break, I'll try to present an offer of proof to you. It takes  
23 a few minutes to organize that, but I can suggest to you again,  
24 in the absence of a distinctive decided privilege or a  
25 legitimate basis of objection, I'm not quite sure why we're



1 going through that exercise. If Mr. Iglitzin thinks that I go  
2 beyond the bounds or you think I go beyond the bounds of what  
3 is an appropriate question, obviously you both speak up and  
4 provide -- in your case, you'll provide instruction to me. I  
5 just think that instead of being economical with our time here,  
6 we're squandering it.

7 HEARING OFFICER ZWEIGHAFT: So Mr. Mendelson, am I correct  
8 in -- I'm not asking you for a written offer of proof, but I am  
9 just trying to understand the, again, the parameters, and  
10 that's just the best word I can think of, for what the  
11 questioning would encompass. Am I correct in understanding  
12 that, you know, the parameters are really the emails  
13 themselves, and it -- this is almost as if, like a custodian of  
14 records type of inquiry?

15 MR. MENDELSON: That's generally fair. I wouldn't  
16 describe it as narrow as a custodian of records. For example,  
17 and again, I don't want to be unfair to myself, and suggest  
18 there is a Perry Mason moment. The emails essentially begin on  
19 March 23, I believe. And so I need to ask questions of Mr.  
20 Frumkin, and if he doesn't know the -- I take it back. They  
21 don't begin March 23. They begin earlier than that, but it's  
22 the questioning -- it's the topics before March 23 that I would  
23 be trying and striving not to dwell on, and to get through  
24 quickly, because I don't think that they're central to what's  
25 at issue in this case. From March 23 to, say, the vote count

1 of April 8th is really, quote/unquote, where the action is  
2 here. And April 1 is when (b) (6), (b) (7)(C) at Region 14 notified the  
3 parties that there were two employees who had not had ballots  
4 sent to them. But March 23, I think, appears to be when there  
5 first was a recognition -- I can't tell you off the top of my  
6 head I know by whom -- that there were ballots that were not  
7 sent out. I think it may be -- forgive me, I don't want to  
8 mess (b) (6), (b) (7)(C) name up. I think (b) (6), (b) (7)(C) first name, I think, is (b) (6), (b) (7)(C).  
9 (b) (6), (b) (7)(C) notified Mr. Frumkin that there were two voters on the list  
10 that had not gotten ballots. And what then emanated from March  
11 23 to April 1 was some back and forth between the Union, I  
12 think. I don't want to be unfair here. This is my  
13 understanding between the Union and Region 14. So I do want to  
14 explore with Mr. Frumkin what happened. The emails do speak,  
15 but I don't know if they speak for themselves. And if he  
16 doesn't remember, he doesn't remember. But it's also plausible  
17 that despite Mr. Iglitzin's representation, when the emails are  
18 in front of him, he may remember. And so I think it's  
19 important for the completeness of the record that we endeavor  
20 to do that.

21 MR. IGLITZIN: And I would renew my request for a written  
22 offer of proof or a list of the questions Mr. Mendelson wants  
23 to ask. It is unusual. It is impactful. We have a certain  
24 privilege that one party cannot call the other party's attorney  
25 as a fact witness without a very compelling reason. Mr.

1 Frumkin has actually spent a lot of time with these emails,  
2 obviously. So it's not as if his memory is going to suddenly  
3 be refreshed by looking at an email he hasn't seen before. He  
4 has reviewed all the emails. He has stated that he has no  
5 separate recollection beyond the substance of the emails.  
6 It's -- frankly, I think Starbucks is trying to make this into  
7 a political circus by being able to talk about how it forced  
8 the Union counsel to testify under oath. And I would submit  
9 that unless the hearing officer can identify a question that is  
10 actually appropriately posed to Mr. Frumkin, in light of Mr.  
11 Frumkin's representations, and the obvious fact that the only  
12 relevant thing in this hearing is the communications between  
13 the Union and Region 14. Even assuming, for the sake of  
14 argument, that that is relevant to anything. If we give  
15 Starbucks the benefit of the doubt, which I always want to do,  
16 and say they have a theory about communications between the  
17 Union or Union counsel and Starbucks -- I mean, and Region 14,  
18 they now have those communications. That's their case. The  
19 fact that those communications are not going to show collusion  
20 or conspiracy or concealment or any of the things that  
21 Starbucks wishes they would show is not a basis for examining  
22 my co-counsel in this case. So what we would like to do --

23 MR. MENDELSON: So let me --

24 MR. IGLITZIN: Sorry, Jedd.

25 MR. MENDELSON: I interrupted you. Go ahead. Go ahead.



1           MR. IGLITZIN: No, I just say -- I want to send you the  
2 emails, send you our proposed stipulation, and ask Mr.  
3 Mendelson to prepare a list of the questions or an offer of  
4 proof, whichever is most convenient for him so the hearing  
5 officer can really make that decision.

6           MR. MENDELSON: I can give another example of, I think,  
7 appropriate questioning, even though in doing so, I have to  
8 be --

9           HEARING OFFICER ZWEIGHAFT: You know what? I don't want  
10 to -- I think we're spending a lot of time going back and forth  
11 on this. And I, you know, I don't want to get bogged down, as  
12 you said, Mr. Mendelson. We could talk about this for longer  
13 than we could -- then it would take to move forward. Ms.  
14 Schneider, I don't want to leave you out of the discussion, if  
15 you wish to 00 I don't know if you have a position or if you --

16           MS. SCHNEIDER: I don't have a position. Thank you for  
17 the opportunity.

18           HEARING OFFICER ZWEIGHAFT: Okay. I just wanted to check.  
19 All right. So I -- as I've said several times now, have not  
20 seen the emails, but I do think that, you know, the -- these  
21 are relevant. I mean, everybody admits that they're relevant  
22 to pending objections. The Union has admitted that they're  
23 relevant to pending objections. I -- you know, without having  
24 seen them, I would -- I'm inclined to give Mr. Mendelson some  
25 leeway, not -- maybe not, you know, a ton of leeway, but to ask

1 him -- but to ask Mr. Frumkin, you know, about the documents.  
2 These are Mr. Frumkin's documents that are coming into the  
3 record. And I understand that the authenticity may not be an  
4 issue, but if there is something that Mr. Mendelson thinks he  
5 needs to create his record, I think that some limited  
6 questioning might be helpful. You know, again, Mr. Iglitzin,  
7 you, obviously, will have the right to object to anything. I  
8 will be listening very carefully for anything that I think goes  
9 beyond the scope of just, you know, making sure that the record  
10 is -- the record of these emails is complete.

11 MR. IGLITZIN: Well, I would like to renew my request that  
12 you review the emails so you can think about whether there's a  
13 need for any further testimony from Mr. Frumkin about those  
14 emails because they speak for themselves. I'd like to renew my  
15 request for an offer of -- specific offer of proof from Mr.  
16 Mendelson about what he hopes to elicit from Mr. Frumkin. And  
17 if you haven't had the opportunity to review your rulings with  
18 the acting Regional Director, I'd ask that you do so because  
19 it's extremely unusual. I'm extremely unhappy about having an  
20 attorney in my firm called as a witness in a case where we're  
21 also the advocates. And I'd like to, frankly, see a better  
22 evidentiary record. So I guess my first question is, how would  
23 you like me to get you a copy of the emails? Should we submit  
24 that as an exhibit or just email it to you for your review, as  
25 well as the stipulation which we offered last night?

1           HEARING OFFICER ZWEIGHAFT: I mean, you can certainly  
2 email it to me. Again, I -- you know, I am not going to know  
3 what the emails don't show either, so if Mr. Mendelson thinks  
4 that there are things that the -- that if there are holes in  
5 the emails, like, I'm not in a position to know that right now,  
6 even if I review it.

7           MR. IGLITZIN: That's why an offer of proof is necessary,  
8 because, frankly, this is being made into a circus. We have  
9 represented the emails are what exists. There is nothing else.  
10 I cannot think of a single legitimate question that can be  
11 posed to Mr. Frumkin that the answer isn't the emails speak for  
12 themselves. So it's not only a waste of time, which I -- time  
13 is a limited resource, but it is improper to let Starbucks  
14 further politicize this matter with what we think is a purely  
15 political move to attack my firm and attack Workers United  
16 counsel. This is a big deal asking the attorney from the other  
17 side to testify in the case that Starbucks has blatantly  
18 politicized in the national press with congressmen opining on  
19 it. And I think a more specific factual record needs to be  
20 established so that the hearing officer's decision can be  
21 predicated on, yes, Mr. Mendelson gets to ask, if not the  
22 following questions, at least the following types of questions  
23 following talks. I don't think that is a unreasonable request  
24 for us to make, given what I think --

25           HEARING OFFICER ZWEIGHAFT: Well, I think that we have

1     limited it to the emails, have we not?

2           MR. IGLITZIN:   That's not a limitation.   That's -- the  
3     emails are the emails.   I have not heard a limitation on  
4     what -- if the questioning is limited to do you have any  
5     independent knowledge or recollection of what led you to write  
6     that email, then we're going into turning work product, then I  
7     literally can't think of a proper question given the  
8     representations that have been made.

9           MR. MENDELSON:   So I know the hearing officer doesn't want  
10    to concede or prolong this, and I also don't want to be accused  
11    of not being transparent.   So if I start to think of questions  
12    that may deviate from what I said before, I want to say that  
13    now.   So for example, a question I think would be perfectly  
14    appropriate would be with respect to a variety of these emails  
15    that were not shared with Ms. Doud or Ms. Carter, but they were  
16    the Starbucks lawyers on this matter.   I think it would be  
17    appropriate for me to ask Mr. Frumkin whether the recipient or  
18    the sender at the Board spoke with him about whether they or he  
19    were going to send that same email or something with the same  
20    substance to Ms. Doud and Ms. Carter.   He may not remember.   He  
21    may know the answer, but it seems to me that's the kind of  
22    question that, although not quite within the limits of what I  
23    said before, is an appropriate question.   I have no interest --  
24    I don't know anything about politicization of this.   I have no  
25    interest in trying to encroach upon what product or union

1 strategy. It is the furthest thing from my mind. This is a  
2 charged case because of the nature of the objections, namely  
3 Labor Board misconduct, Region 14 misconduct. I don't think  
4 anyone can escape that. But my goal in asking that question  
5 obviously would be, along with the question I posed earlier as  
6 a sample, would be if we are able to ascertain who is  
7 responsible for certain decisions that were made in terms of  
8 disclosure of certain communications and nondisclosure to the  
9 company, or the idea of having an in-person election, in part,  
10 in what was stipulated to be a mail-ballot election. I think  
11 that's all appropriate fodder.

12 MR. IGLITZIN: And not to belabor the point, we have  
13 already represented on the record as officers of the Court that  
14 Mr. Frumkin does not have knowledge of communications between  
15 our office and Region 14, other than those emails. So it is  
16 purely an effort to put Mr. Frumkin on the stand and pound away  
17 at him and attack his integrity. It does not further the fact  
18 finding. But again, at the risk our -- you know, to what  
19 (audio interference), I've made my request that we be able to  
20 have the hearing officer look at the emails. I think you'll be  
21 surprised at what a full picture they portray because, in fact,  
22 there was no collusion here. A very simple problem with Region  
23 14 having failed to mail out ballots and Union's counsel  
24 saying, you know, we've got a problem here, how do we get  
25 these -- how do we enable these workers to vote, and the Region



1 solving that problem. And there should be an actual offer of  
2 proof because, well, we want to ask questions to test the  
3 veracity of Mr. Frumkin's representation. That is not an  
4 appropriate line of questioning for an officer of the Court in  
5 a case in which he is counsel.

6 HEARING OFFICER ZWEIGHAFT: Okay. I don't believe that  
7 that's what the Employer is proposing. That's not my  
8 understanding.

9 MR. IGLITZIN: We won't know unless we get a written offer  
10 of proof because that's exactly what I hear. Since he's  
11 already said he doesn't remember, and the only thing that is  
12 being proposed is really, are you sure you don't remember,  
13 essentially. And that's not an appropriate question for the  
14 offer of the court who's representing he doesn't remember.

15 MR. MENDELSON: It is appropriate, though, to show someone  
16 documents and to see whether, through that and questioning,  
17 they do remember something so --

18 MR. IGLITZIN: It might be under some circumstances, but  
19 not under these circumstances. But I renew my request that  
20 there be an offer of proof to see what potentially relevant  
21 evidence could be admitted for Mr. Frumkin because I don't  
22 believe there is any. But if there is some, then we'll have --  
23 figure it out, Mr. Frumkin testify as to it. But we do not  
24 have a developed record enough that allows the hearing officer,  
25 I think, to make that decision right now on the spot.

1 HEARING OFFICER ZWEIGHAFT: Mr. Mendelson, do you have  
2 anything else to add?

3 MR. MENDELSON: No. I think -- as you pointed out, I  
4 think (audio interference) this so I -- by the way, I have no  
5 objection to you reviewing the documents that have been  
6 provided this afternoon. I have no problem with that.

7 HEARING OFFICER ZWEIGHAFT: Okay.

8 MR. MENDELSON: I'm not saying it's a necessary step, but  
9 Mr. Iglitzin has asked you to do that, and I don't have a  
10 problem with it.

11 HEARING OFFICER ZWEIGHAFT: We would ask, if you're  
12 inclined to do that, that you look at the unredacted versions  
13 so you get the complete picture when you're looking at it. And  
14 also, a witness who doesn't recall becomes unavailable under  
15 the federal rules. And that makes -- that's necessary, gives  
16 way to other available forms of evidence. So that's another  
17 reason to have that testimony. Thank you. All right. So  
18 these are going to come in. Are they coming in as a joint  
19 exhibit or are they coming in as one side's exhibit? How  
20 are --

21 MR. IGLITZIN: Well, at this point, because Starbucks has  
22 asked you look at unredacted exhibits, we would like to just  
23 email them to you with an agreement that we'll put the redacted  
24 versions in the record. I'm afraid if we put them in as a  
25 formal exhibit, then we've lost the issue around the

1 redactions. I'm open to other suggestions from counsel from  
2 Starbucks, but that's my only concern about -- I have no  
3 problem with you seeing the unredacted versions.

4 How about this? We email you the unredacted versions, and  
5 we submit, as an exhibit, the redacted versions subject to  
6 further proposals if necessary. Does that work for Counsel for  
7 Starbucks?

8 MS. DOUD: I think the redactions as they exist currently  
9 are misleading, and so we need to establish a redaction key  
10 that is acceptable to the Union, to Starbucks, and to the  
11 hearing officer.

12 MR. IGLITZIN: Right. I'm happy to just send the  
13 unredacted version by email to the hearing officer, at this  
14 stage, understanding we'll figure out the record later.

15 HEARING OFFICER ZWEIGHAFT: Is there an objection to that?

16 MR. MENDELSON: No.

17 HEARING OFFICER ZWEIGHAFT: Okay. Why don't you go ahead  
18 and send them to me?

19 MR. IGLITZIN: All right. That should be happening  
20 momentarily.

21 HEARING OFFICER ZWEIGHAFT: Okay. I mean --

22 MS. DOUD: Are we copied on that email?

23 MR. IGLITZIN: Yes.

24 MS. DOUD: Thank you.

25 MR. IGLITZIN: You will be.

1 MS. SCHNEIDER: Will I be copied as well, please?

2 MR. IGLITZIN: Of course. I'm sorry, Abby.

3 MS. SCHNEIDER: Thank you.

4 HEARING OFFICER ZWEIGHAFT: Okay. They haven't come in to  
5 me yet, and I've been watching my email. But you've sent them,  
6 Mr. --

7 MR. IGLITZIN: It sounds like my paralegal needs one more  
8 email address so --

9 HEARING OFFICER ZWEIGHAFT: Okay.

10 MR. FRUMKIN: Yeah.

11 HEARING OFFICER ZWEIGHAFT: Okay, okay.

12 MR. FRUMKIN: Abby, I think we need your email address,  
13 please. You're muted.

14 HEARING OFFICER ZWEIGHAFT: You're muted.

15 MS. SCHNEIDER: Sorry. It's my name as spelled on the  
16 screen. First name dot last name at NLRB dot gov.

17 MR. IGLITZIN: Thank you.

18 MS. SCHNEIDER: Thank you.

19 HEARING OFFICER ZWEIGHAFT: All right. So I don't think  
20 we need to sit on the record while we're waiting for these  
21 emails to come through, and then I'll look at them for a few  
22 minutes. So it's 3:10 in New York right now. Let's go off the  
23 record until 3:30, and come back on the record at 3:30, please.

24 MR. IGLITZIN: Thank you.

25 (Off the record at 3:10 p.m.)



1           HEARING OFFICER ZWEIGHAFT: All right. We're back on the  
2 record. During our break, I received the emails that were  
3 produced from the Union to the Employer. They are not marked  
4 as exhibits or anything. They were just -- I'd get a batch of  
5 emails. And I believe, Ms. Schneider, you got a copy of it?

6           MS. SCHNEIDER: Yes. I received a copy. Thank you.

7           HEARING OFFICER ZWEIGHAFT: Okay. I just want to make  
8 sure. I haven't had a ton of time, but I did take a quick look  
9 through them. It seems to me that they're fairly self-  
10 contained, but I also think that the Employer has a right to  
11 make their record in this case. Their -- it's their  
12 objections. Mr. Iglitzin, I know you think that it's, you  
13 know, very unusual for an attorney to be a fact witness. I  
14 wouldn't say that it's routine, but it does happen with our  
15 cases where attorneys have had contact that may be an issue of  
16 fact in the case, and that was the issue -- one of the issues  
17 here. So I'm going to allow some -- I'm going to allow Mr.  
18 Mendelson some leeway to ask questions about what's in the  
19 emails. My understanding is that, you know, maybe we don't  
20 want to think about it as you thought maybe the custodian of  
21 the record was not quite the correct characterization, and I  
22 agree with that. But I do expect the questioning to be limited  
23 to what we see here.

24           MR. IGLITZIN: Madam Hearing Officer, I really didn't  
25 think that Starbucks was going to continue trying to pursue a

1 line of questioning to Mr. Frumkin about these emails once we  
2 produced them. I've not completed my research into the  
3 professional ethical ramifications of this. My proposal is  
4 that we have Starbucks put on its other witnesses first so we  
5 can then see what's left, and if necessary, produce Mr. Frumkin  
6 at that time.

7 MR. MENDELSON: You know, I don't want to be provocative  
8 or disrespectful, but I'm not sure what Mr. Iglitzin's research  
9 into professional ethical obligations has to do with this. I'm  
10 seeking to question Mr. Frumkin as a fact witness. So I  
11 respectfully have to suggest that we not postpone his  
12 examination.

13 MR. IGLITZIN: And I guess I would ask why Starbucks can't  
14 put on its other witnesses of its case-in-chief before Mr.  
15 Frumkin to -- the record is that much clearer and it may reduce  
16 or simplify the questions that might otherwise be proposed to  
17 Mr. Frumkin. I will refer the parties and hearing officer the  
18 ABA Model Rules 3.7. The comments talked about, one, combining  
19 the roles of advocate and witness can prejudice the tribunal  
20 and the opposing party. It can also involve a conflict of  
21 interest between the lawyer and client. And two, the advocate  
22 witness rule, which talks about how the tribunal has proper  
23 objection, and prior attack may be confused or misled by a  
24 lawyer serving as both advocate and witness. That is just the  
25 highest level ethical and professional concerns. It is the

1 serious ramifications of doing this. I have not heard a reason  
2 why Starbucks can't put on the rest of its case first, or at  
3 least part of the rest of its case first. Give me a chance to  
4 finish my research on that, and to refine and potentially  
5 narrow the scope of questions that I propose to Mr. Frumkin.

6 MR. MENDELSON: So just for what it's worth, my belief is  
7 that most of the concerns that those rules implicate relate to  
8 the confusion a juror might suffer in seeing a lawyer function  
9 as a witness. To answer Mr. Iglitzin's other question, you  
10 know, we've said to you from the outset, Madam Hearing Officer,  
11 that we think that this can be an economical proceeding. The  
12 allegation of misconduct here relates, in large part, to the  
13 fact that there were things done by the Union and Region 14 of  
14 which the company was not aware, and which were not disclosed  
15 to the company. So the witnesses who have that information are  
16 the Union representatives, principally Mr. Frumkin, because he  
17 was the actor, the fact witness acting on behalf of the Union,  
18 not in this instance as a lawyer, but essentially as an  
19 operator who was not engaging in legal advice, but taking  
20 actions with the Region, Region 14. There's no privilege here,  
21 as Mr. Iglitzin has conceded. The other witnesses who have the  
22 information are the Region 14 personnel. Those are the  
23 witnesses who have the core information that we seek to elicit  
24 to efficiently prove the objection or objections.

25 HEARING OFFICER ZWEIGHAFT: Yeah. I think with regard to

1 the objections that are covered by these emails, I don't know  
2 what other witnesses Mr. Mendelson has because if he's at --  
3 and you know, we haven't gotten to the petition to revoke on  
4 the General Counsel's petition -- I'm sorry, general -- for the  
5 counsel for the Regional Director's petition to revoke it. But  
6 it seems to me that's the -- that is the universe of his  
7 witnesses, probably, for these objections. And we would  
8 certainly -- and, you know, at this point, we -- I haven't  
9 ruled on the petition to revoke, but I do think that Mr.  
10 Frumkin can testify to these emails.

11 As I said, there are -- we do have cases where attorneys  
12 testify as to fact issues in NLRB cases. It happens in  
13 information cases. It happens in bargaining cases where the  
14 attorney is basically acting as a fact witness. And I would  
15 direct Mr. Mendelson to, you know, restrict his questioning to  
16 Mr. Frumkin as a fact witness, as he's represented that he  
17 will.

18 Obviously, Mr. Iglitzin can, you know, can object to any  
19 questions that he thinks stray from that, and I'll rule on the  
20 objections and I will listen as well.

21 MR. IGLITZIN: All right. Let's roll.

22 HEARING OFFICER ZWEIGHAFT: Okay. Mr. -- so Mr.  
23 Mendelson, you may call your witness.

24 MR. MENDELSON: We'll call Mr. Frumkin at this time.  
25 Whereupon,



1 GABE FRUMKIN

2 having been duly sworn, was called as a witness herein and was  
3 examined and testified as follows:

4 HEARING OFFICER ZWEIGHAFT: I usually give witnesses some  
5 direction in terms of please keep your voice up. Please let us  
6 know if you can't hear us or if you don't understand a  
7 question, please say that. I think you're probably already  
8 aware with direction -- familiar with some directions to  
9 witnesses so I'll leave it at that. Mr. Mendelson, you can go  
10 ahead.

11 MR. MENDELSON: Thank you. I'd like to ask that you  
12 confirm that I'm questioning this witness as a hostile witness.

13 HEARING OFFICER ZWEIGHAFT: I think that -- yes, I will  
14 allow that.

15 MR. MENDELSON: Thank you. And consistent with our  
16 discussion, I'm going to skip over large portions of my outline  
17 so if this is herky-jerky, I apologize and I do ask for a  
18 little bit of leeway. I'd like to ask a couple of questions  
19 that aren't strictly within the emails. I think you'll see why  
20 I'm asking them. And if there's a problem, then Mr. Iglitzin  
21 will object and/or you'll instruct me not to proceed. But I do  
22 think it's appropriate for me to ask a couple of questions.  
23 You'll see now what I'm talking about. And I'm going to try to  
24 be efficient, not get hung up on things that Mr. Frumkin  
25 presumably knows about.

**DIRECT EXAMINATION**

1

2 Q BY MR. MENDELSON: Mr. Frumkin, if you need to see the  
3 February 25, 2022 stipulation, tell me. But assuming that you  
4 don't, can you and I agree that there was no discussion between  
5 the company, Union or Region in connection with its execution  
6 about having any manual or in-person voting? It was solely  
7 about mail-ballot election.

8 A I don't agree with that.

9 Q Okay. Tell me where I'm mistaken, sir.

10 A Well, you asked about discussion. I presume you're  
11 talking about what is actually in the stipulated election  
12 agreement.

13 Q Well, my understanding is it's a stipulated agreement  
14 providing for mail-ballot election.

15 A Yes. These -- based on my review, the stipulated election  
16 agreement called for mail-ballot election, but there may have  
17 been discussion --

18 Q And what I was talking --

19 A -- about it beforehand.

20 Q Okay. And that's what I'm trying to get at. I don't have  
21 knowledge. You may. Was there any discussion between the  
22 parties in the Region about having an in-person election?

23 A I don't actually recall that specifically.

24 Q Okay. And if you remember, the petition that was filed,  
25 am I correct that it requested a mail-ballot election?



1 A I don't recall that either.

2 Q Okay. Fair enough. And again, I don't want to get lost  
3 in any of this. There came a time where you or someone in your  
4 office confirmed or identified that the employer's submitted  
5 voting list omitted two people. You informed the employer's  
6 lawyers and the employer then submitted an amended voter list,  
7 correct?

8 MR. IGLITZIN: Objection. Compound question.

9 HEARING OFFICER ZWEIGHAFT: Yeah. Can you break that down  
10 a little bit, please?

11 MR. MENDELSON: Sure.

12 Q BY MR. MENDELSON: Am I correct, sir, that either you or  
13 someone in your office recognized that two potential eligible  
14 voters had been omitted from the initial voter list the  
15 employer submitted?

16 A Correct.

17 Q And as a result of that, you or someone from your office  
18 asked the Employer counsel to correct that omission, and the  
19 Employer then submitted, the next day, an amended voter list  
20 that included the two people who had been omitted.

21 A Correct.

22 MR. IGLITZIN: Objection, contact -- compound.

23 HEARING OFFICER ZWEIGHAFT: Okay. Well, it seems like the  
24 witness followed and was able to answer so --

25 MR. MENDELSON: And that's one of the emails that we



1 provided earlier today.

2 MR. IGLITZIN: Okay.

3 Q BY MR. MENDELSON: So let me direct your attention, sir.  
4 And we haven't decided, I think, how to characterize these. I  
5 guess we can decide that now. To the email provided today  
6 that, at the very top, says April 1, 2022, and it's from  
7 (b) (6), (b) (7)(C) to you.

8 MR. IGLITZIN: Okay. Do you have a copy of that you can  
9 review since we're not sharing the screen or anything?

10 THE WITNESS: It will take me a while. I closed out all  
11 my files so I didn't have anything in front of me.

12 MR. IGLITZIN: Yeah. I assume you don't have an objection  
13 to Gabe bringing up that email so he can follow along?

14 MR. MENDELSON: Not at all. I assumed he might have it.  
15 I didn't know. We could also see if someone wants to share the  
16 screen. But I think it's preferable if he can get the  
17 documents up for himself.

18 MR. IGLITZIN: And especially because of the redaction  
19 issues, employee names issues, it's better not to share the  
20 screen.

21 MR. MENDELSON: Fair enough.

22 HEARING OFFICER ZWEIGHAFT: Okay.

23 THE WITNESS: Can one of you share the file name with me,  
24 please? Oh, I think -- is it 2022, 0401-(b) (6), (b) (7)(C) response?

25 MS. CARTER: Yes, I think that's correct.



1 THE WITNESS: Okay. Thank you.

2 MR. IGLITZIN: I'm sorry, Gabe. Would you repeat which  
3 email it is that you're looking at?

4 MR. MENDELSON: It should be the one that says at the  
5 top -- it's actually three emails on a single page. The very  
6 top one says April 1, 2022, at 5:47 p.m. from (b) (6), (b) (7)(C) to  
7 Gabe Frumkin.

8 MR. IGLITZIN: Go ahead. Thank you.

9 HEARING OFFICER ZWEIGHAFT: Okay.

10 THE WITNESS: Okay.

11 MR. MENDELSON: Okay, so --

12 THE WITNESS: I have it in front of me, thank you.

13 MR. MENDELSON: Okay, very good. And I'm going to proceed  
14 with some deliberation or some -- I'll be deliberate because I  
15 want the hearing officer, who is not familiar with these  
16 documents, to have a chance to catch up.

17 Q BY MR. MENDELSON: So if you look at the bottom of the  
18 page, there is an email there from (b) (6), (b) (7)(C). All of these are  
19 on (b) (6), (b) (7)(C) at 4:41 p.m. And (b) (6), (b) (7)(C) wrote to Betsy Carter, Kim  
20 Doud, yourself, Mr. Iglitzin, and Mr. Cervone. And we can just  
21 confirm Mr. Cervone is another lawyer in your office.

22 A That's incorrect.

23 Q Oh. Who is Mr. Cervone? Sorry.

24 A He's another counsel representing Starbucks Workers  
25 United. He filed a notice of -- I guess he filed the initial

1 representation petition in this charge, but is -- we took the  
2 driver's seat. He's mostly been handling, as far as I know,  
3 unfair labor practice charges filed against Starbucks in the  
4 Chicagoland area.

5 Q Okay. My apologies. I didn't know who he was. I made an  
6 assumption. And then, (b) (6), (b) (7)(C) from the Labor Board Region  
7 14 was copied, correct?

8 A It appears so.

9 Q And this is the, quote/unquote, inadvertent fumble email  
10 where (b) (6), (b) (7)(C) acknowledges to this audience that (b) (6), (b) (7)(C) had made  
11 a mistake by using the initial voter list, and because of that,  
12 no ballots were sent to two employees, specifically the two  
13 employees who were added to the revised list, the supplemental  
14 list, correct?

15 A I wouldn't categorize it as an inadvertent fumble email,  
16 quote/unquote.

17 Q Okay.

18 MR. IGLITZIN: And I'm going to object to questions where  
19 there -- an objection that the document speaks for itself.

20 MR. MENDELSON: Okay. I -- listen, I just wanted to get  
21 everybody on the same plane here, okay.

22 HEARING OFFICER ZWEIGHAFT: Yeah. I'm -- I -- we all have  
23 a copy of it, and I have it in front of me, so I appreciate it.  
24 I appreciate your trying to summarize it, but I'm following  
25 along.

1 MR. MENDELSON: Okay.

2 Q BY MR. MENDELSON: If you go to the next email in the  
3 middle of the page, the second of the three in the middle, it's  
4 from you, Mr. Frumkin, to (b) (6), (b) (7)(C), Mr. Iglitzin, and Mr.  
5 Cervone, an (b) (6), (b) (7)(C), correct?

6 A Correct.

7 Q And Ms. Carter and Ms. Doud are omitted from the people to  
8 whom it is sent or who are copied, correct?

9 A Correct.

10 Q How is it that they came to be omitted from this email?

11 A I omitted their names from the email.

12 Q Okay. So you -- but to your best recollection, you did  
13 not -- that wasn't an inadvertence. That was a conscious  
14 decision, correct?

15 A It would be very difficult to inadvertently delete two  
16 people's names. I believe it would have been deliberate.

17 Q Okay. And then, the email at the top of the page is (b) (6), (b) (7)(C)  
18 responding to you alone, correct?

19 A Correct.

20 Q And in --

21 A That's what it says on the document.

22 Q Okay. And in that email at the top of the page, (b) (6), (b) (7)(C)  
23 indicates that the Region is making duplicate or let's call it  
24 replacement ballots available to three voters, and both mailing  
25 them to those voters, and having a copy of those replacement

1 ballots left at the subregional office in case they come in to  
2 vote in person, correct?

3 MR. IGLITZIN: I object. The email speaks for itself.  
4 This is not appropriate examination of Mr. Frumkin.

5 HEARING OFFICER ZWEIGHAFT: Okay. Well, again, I think  
6 Mr. Mendelson is trying to summarize. I mean, I will say, I  
7 think -- I don't know if there are any names on this email. We  
8 haven't identified it. I think the record is going to be  
9 confusing if we don't have this identified in the record. I  
10 take it that, at some point, it's going to be an exhibit.

11 MR. MENDELSON: So I was of the view previously that these  
12 should be Union exhibits. But in order to break that logjam  
13 about that, I'm going to suggest that we skip some numbers  
14 relative to what I think the Employer's at. And let's call  
15 this Employer Exhibit 60.

16 HEARING OFFICER ZWEIGHAFT: Any objection? I think that's  
17 fine with me, as long as we're clear as to what we're looking  
18 at, because I think I have the --

19 MR. IGLITZIN: No objection from the Union.

20 HEARING OFFICER ZWEIGHAFT: Okay, that's fine. So we're  
21 looking at what's been identified now as Employer Exhibit 60.  
22 This will have to be emailed to everybody as that, as titled as  
23 that, as per the instructions, including the court reporter.  
24 That doesn't have to happen right now. I think we all have it  
25 in front of us, but I'm going to make a note of that and you



1 can do that during a break.

2 MS. DOUD: Just in case, just so the record is clear, and  
3 I'm sorry to chime in, but there is a 60 that has been marked.  
4 So it would be 61, just to avoid confusion.

5 MR. MENDELSON: Oh, I'm sorry. My mistake, 61.

6 HEARING OFFICER ZWEIGHAFT: Okay. So Employer Exhibit 61  
7 is this one-page document with the three emails all dated  
8 Friday, August 1st. I'm sorry, excuse me. Friday, April 1st,  
9 2022. And the top one, I think, as mentioned before, Mr.  
10 Mendelson says, at 5:47:22 p.m. So that's Employer Exhibit 61.

11 **(Employer Exhibit Number 61 Received into Evidence)**

12 HEARING OFFICER ZWEIGHAFT: That's what we're all looking  
13 at. I'm sorry to interrupt you. You can go ahead.

14 MR. MENDELSON: No, that's my mistake initially. And I  
15 asked the initial question as a foundational question, because  
16 I want to ask this question now of Mr. Frumkin.

17 Q BY MR. MENDELSON: Sir, am I correct that before April 1,  
18 2022, which I know was a Friday, you were aware that the Region  
19 was now thinking about having in-person voting.

20 A No, I don't recall having that knowledge.

21 Q So if I understand your testimony correctly, this is the  
22 first time you had any understanding that the Region was  
23 considering in-person voting.

24 A I don't recall having any other knowledge before then.

25 Q Okay. We can search these documents. I'm doing this, you



1 know, on the fly myself. Am I correct that before April 1,  
2 2022, you had contacted (b) (6), (b) (7)(C) , (b) (6), (b) (7)(C) , and had  
3 expressed frustration with the Region because it had not yet  
4 gotten replacement ballots out to -- at a -- at the very  
5 minimum -- the two people who had been initially omitted from  
6 the voter list who were then included on the supplemental voter  
7 list?

8 A I don't recall specifically that conversation. I do  
9 recall reading that claim in Starbucks and Littler Mendelson's  
10 letter yesterday and under -- understand that assertion, but I  
11 don't specifically recall a conversation about that.

12 Q Okay. Okay, just -- just one moment. I have to go  
13 through these documents and try to identify what I think I need  
14 to ask of you.

15 HEARING OFFICER ZWEIGHAFT: It's okay.

16 Q BY MR. MENDELSON: So there's a email today which has at  
17 the top of the page -- by the way, it's a three -- I'm sorry --  
18 it's a four-page string of emails, and at the top of the page  
19 it says, "April 5, 2022, 1:57 p.m. from (b) (6), (b) (7)(C) " to a  
20 bunch of people. So let's all see if we can find that, and we  
21 will call that Employer Exhibit 62.

22 **(Employer Exhibit Number 62 Marked for Identification)**

23 HEARING OFFICER ZWEIGHAFT: Okay.

24 Q BY MR. MENDELSON: Mr. Frumkin, you'll tell me when you  
25 found it?

1 A I have found it. I'm reviewing it.

2 Q Okay.

3 A Thank you.

4 Q Okay. On the second of the pages, there's an email from  
5 Ms. Doud, dated April 4, 9:55 a.m., and it is responsive to the  
6 email from Friday, April 1, which began with (b) (6), (b) (7)(C)  
7 referencing the inadvertent fumble, and in -- in the April 4  
8 email, Ms. -- Ms. Doud asked of -- of (b) (6), (b) (7)(C) -- although  
9 there are other people on the email -- when the additional  
10 ballots were mailed. Do you see that one?

11 MR. IGLITZIN: Objection. The email speaks for itself.

12 HEARING OFFICER ZWEIGHAFT: Okay.

13 MR. MENDELSON: (Indiscernible, simultaneous speech) --

14 HEARING OFFICER ZWEIGHAFT: You're referring us -- he's  
15 directing the witness to a specific portion. It's fine. Go  
16 ahead.

17 Q BY MR. MENDELSON: You see that one, sir?

18 A I do see that section.

19 Q Okay. And then the next email above it -- I'm sorry. I  
20 misspoke before. It's on the third page, not the second page.  
21 My mistake. And the next email begins on the second page.  
22 It's from (b) (6), (b) (7)(C) to Ms. Doud, answering her inquiry. And I  
23 won't repeat it. Mr. Iglitzin is -- is making me mindful that  
24 he doesn't want me to say what's in the documents if I don't  
25 have to. You see the response from (b) (6), (b) (7)(C) to Ms. Doud,

1 correct?

2 A I'm following along.

3 Q Okay. Then there's an email on April 5 from Ms. Doud to a  
4 bunch of people, including (b) (6), (b) (7)(C) and yourself, and you see  
5 that email, sir? It's about a paragraph, probably 10, 11  
6 lines.

7 HEARING OFFICER ZWEIGHAFT: This is sent April 5th at?

8 MR. MENDELSON: 8:41 a.m.

9 A Yeah. I'm following along.

10 HEARING OFFICER ZWEIGHAFT: Okay.

11 Q BY MR. MENDELSON: Okay. And then in response to Ms.  
12 Doud's email on April 5, the next email in the string, moving  
13 in -- into more recent time, is your response on 1:51 p.m. --  
14 it's on the first page -- "The Union rejects the proposal that  
15 Ms. Doud makes", correct?

16 A That's not quite what it says. It says, "The Union --"

17 MR. IGLITZIN: I'm going to object.

18 A -- "does not agree".

19 MR. IGLITZIN: The exhibit speaks for itself.

20 HEARING OFFICER ZWEIGHAFT: All right. Well --

21 MR. MENDELSON: I'll -- I'll -- I'll -- I'll move on.

22 I'll move on.

23 Q BY MR. MENDELSON: On April 4, when you saw the response  
24 that (b) (6), (b) (7)(C) sent to Ms. Doud at 7:02 p.m., did you -- or to  
25 your knowledge, anyone else from the Union -- take any action

1 to inform Ms. Doud that more actions were being taken by Region  
2 14 than merely mailing out two ballots?

3 A Did -- did I?

4 Q Yes, sir.

5 A No.

6 Q Okay. And am I correct that on April 4, you were aware  
7 that the Region was doing more than just mailing those two  
8 ballots out?

9 A I understand what the -- I understood -- or I had been  
10 told -- in the email that we just reviewed in Exhibit 61 --  
11 that they had set aside other ballots.

12 Q Fair enough. And I'm simply trying to establish that you  
13 have no knowledge of any other written or oral communication,  
14 by yourself or the Union, to Ms. Doud on April 4 or for that  
15 matter, I think, at any point up to the vote count -- informing  
16 her of those other actions the Region has taken?

17 A I have no other knowledge.

18 Q Okay. If you look at the email that is dated April 5,  
19 2022, at 9:41 a.m., which is part of a three-page string -- and  
20 it's an email from you to (b) (6), (b) (7)(C) --

21 HEARING OFFICER ZWEIGHAFT: Is this a different string of  
22 emails?

23 MR. MENDELSON: Yes. It's on -- I'm sorry. It's a  
24 different string of emails.

25 HEARING OFFICER ZWEIGHAFT: Okay.

1 MR. IGLITZIN: What is the title of the document that the  
2 email --

3 MR. MENDELSON: Well, it starts -- oh, the title? I'm not  
4 sure. It's April 5, 2022, at 9:41 a.m. from Mr. Frumkin to (b) (6), (b) (7)(C).  
5 (b) (6), (b) (7)(C) .

6 MR. IGLITZIN: I've got it. Thank you.

7 THE WITNESS: 9:41 a.m., you said?

8 Q BY MR. MENDELSON: Yes, sir.

9 A At the top?

10 Q Yes, sir.

11 A Okay. I have that document in front of me.

12 HEARING OFFICER ZWEIGHAFT: Okay. So we're going to  
13 identify this as Employer --

14 MR. MENDELSON: 62.

15 HEARING OFFICER ZWEIGHAFT: 62, right?

16 MR. MENDELSON: Yes.

17 MR. IGLITZIN: It's 62? I thought we were at 63 at this  
18 point.

19 UNIDENTIFIED SPEAKER: It's 63.

20 MR. MENDELSON: Oh, my mistake. Sorry. Sorry.

21 Q BY MR. MENDELSON: Tell me when you're ready, sir.

22 A Oh, forgive me. I'm looking at the unredacted version of  
23 this currently.

24 Q I -- I'm -- I'm not going to ask you a question that  
25 necessitates referencing the name of the person that is

1 redacted.

2 A Okay. Let me -- give -- give me a moment to review it,  
3 please.

4 Q Sure. Sure.

5 A Okay.

6 Q Okay. So on the second of the three pages, there's an  
7 email from yourself to (b) (6), (b) (7)(C) on April 4 at 4:34 p.m. The  
8 first few words of the email are "I understand that".

9 A Right.

10 Q Okay. So my understanding -- I just want to make sure  
11 it's correct -- is that at that time on this date you were  
12 seeking to confirm with (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) would let you know  
13 when the individual in issue had been able to reach (b) (6), (b) (7)(C) and  
14 schedule a time to vote at the subregional office, correct?

15 MR. IGLITZIN: Objection. The email speaks for itself.

16 HEARING OFFICER ZWEIGHAFT: I -- I'll -- I'm going to  
17 allow that.

18 A At that point, I asked a question. But then if you scroll  
19 up to the first page, it says that the -- the Board agent, (b) (6), (b) (7)(C)  
20 (b) (6), (b) (7)(C), says that (b) (6), (b) (7)(C) can't actually answer any of those  
21 questions and wouldn't provide me with that information.

22 Q BY MR. MENDELSON: Okay.

23 A It says specifically in (b) (6), (b) (7)(C) voice, "I cannot  
24 provide you with information concerning who has or has not  
25 called the office and/or has voted in the election".

1 Q Very good. Next --

2 MR. MENDELSON: Just give me a moment again. I'm trying  
3 to avoid asking questions that I think the hearing officer  
4 or -- or Mr. Iglitzin will find unnecessary.

5 HEARING OFFICER ZWEIGHAFT: That's okay. I appreciate  
6 that.

7 Q BY MR. MENDELSON: Just -- just to be certain of  
8 something, sir, for the record, on April 4 at 4:30 p.m., you  
9 knew that the Region was permitting voters to come to the  
10 subregional office to cast their ballots in person, correct?

11 A I understood that voters had to call to schedule a time to  
12 pick up a ballot, is my understanding.

13 Q Well -- well, sir, is your understanding that they could  
14 pick up a ballot, or I think, as early as April 1, the Region  
15 had informed you that voters could come to the subregional  
16 office and cast the ballot in person?

17 A I think -- I -- I don't have a exact recollection of what  
18 my understanding was on April 1st, if that's your question.

19 Q Well, my question was to confirm that on April 1st you  
20 knew that the Region was permitting in-person voting. And  
21 your -- your response appears to be that on April 1, you're not  
22 clear at this time as to what your understanding was?

23 A Can you say that again, please?

24 Q Well, I was saying to you my question is to confirm that  
25 on April 1, you were aware that the Region was permitting in-



1 person balloting at the subregional office -- in-person voting.  
2 I -- I won't state my understanding of your answer; you can  
3 state it for yourself.

4 A I'm not sure that I understood that people would vote in  
5 the office, if that's what you're asking.

6 Q Did -- did there come a time when you knew that the Region  
7 was permitting that?

8 A I don't recall knowing that. And I -- I recognize, you  
9 know, having read, again, the -- the public letter that Littler  
10 and Starbucks published yesterday -- I recognize the  
11 representations you all are making, but don't remember it --  
12 my -- you know, chronology of my precise understandings or  
13 precisely what I understood over four months ago.

14 Q So -- so sir, if I refer you back to Employer Exhibit 61,  
15 please read the second of the three emails.

16 A Um-hum.

17 Q Am I correct -- and Mr. Iglitzin takes exception to me  
18 doing this -- the second paragraph begins, "[b] (6), (b) (7)(C)" -- meaning [b] (6), (b) (7)(C)  
19 [b] (6), (b) (7)(C) -- "assured me that workers could come into the  
20 subregional office next week to vote", correct?

21 A That's what that says.

22 Q And that -- and that's what you wrote, sir, correct?

23 A That is what I wrote.

24 Q Okay. And if I then direct you to the next document,  
25 which we'll mark as Employer Exhibit 64, and that is the one

1 that at the top says March 23, 2022, at 1:39 p.m.

2 **(Employer Exhibit Number 64 Marked for Identification)**

3 HEARING OFFICER ZWEIGHAFT: That's a two-page document?

4 MR. MENDELSON: Correct.

5 HEARING OFFICER ZWEIGHAFT: Okay.

6 MR. IGLITZIN: Three -- three documents with the March 23  
7 date.

8 MR. MENDELSON: I'm sorry about that. This -- this is the  
9 one that begins -- the text begins, (b) (6), (b) (7)(C), three more voters".

10 HEARING OFFICER ZWEIGHAFT: It's 1:39:51 is the time span?

11 MR. MENDELSON: Yes.

12 MR. IGLITZIN: Go ahead. Thank you.

13 Q BY MR. MENDELSON: Tell me once you've reviewed this, Mr.  
14 Frumkin.

15 A Will do.

16 MR. IGLITZIN: Let me just point out that before the  
17 Employer submits this as an exhibit, this does have the names  
18 of workers on it who we think should be redacted.

19 HEARING OFFICER ZWEIGHAFT: Okay.

20 MR. MENDELSON: As well as addresses.

21 HEARING OFFICER ZWEIGHAFT: As well as addresses. Yes, I  
22 see that. Okay. We -- all right. So just to be clear on the  
23 record, we are all right now looking at what's been marked as  
24 Employer's Exhibit 64. And it's -- I -- I am -- at least I'm  
25 looking at an unredacted copy, and I do see names and

1 addresses. We will -- I would ask that the copy that's, you  
2 know, circulated and sent to the court reporter be redacted,  
3 and we can discuss off the record how we're going to redact  
4 that at that point, and.

5 MR. MENDELSON: And by the way, I think the simple  
6 answer -- even though you say we'll do it off the record -- is  
7 I think is what Ms. Doud was saying earlier is instead of using  
8 just numbers 1 and 2 -- which is what I think the Union did --  
9 we would suggest that however many numbers there are -- I won't  
10 say that right now -- that we just assign a number to each  
11 person and then the version that has -- that's in the record --  
12 will have the number -- and everybody who's a participant in  
13 the hearing will have the key to those numbers.

14 HEARING OFFICER ZWEIGHAFT: Okay. I -- I think we can  
15 really talk about this another time. I don't want to get  
16 bogged down in it right now.

17 MR. MENDELSON: Okay.

18 Q BY MR. MENDELSON: Mr. -- Mr. Frumkin, have you reviewed  
19 this yet?

20 A Yes.

21 Q Okay. So on Employer 64 on the second page, the initial  
22 email is from (b) (6), (b) (7)(C) to you. And am I correct, it  
23 identifies four individuals who (b) (6), (b) (7)(C) indicates need replacement  
24 ballots?

25 MR. IGLITZIN: Objection. The email speaks for itself,

1 and we discussed that it's not necessary or appropriate to ask  
2 Mr. Frumkin to characterize the content of emails that is in  
3 fact going --

4 HEARING OFFICER ZWEIGHAFT: I --

5 MR. IGLITZIN: -- to be in evidence.

6 HEARING OFFICER ZWEIGHAFT: Okay. I -- I don't think he  
7 was asking him. I think he was directing him to the --

8 MR. IGLITZIN: He wasn't -- with -- respectfully, he was  
9 not asking -- he was not directing him.

10 HEARING OFFICER ZWEIGHAFT: Oh.

11 MR. IGLITZIN: He said, "Am I correct that this is what  
12 (b) (6), (b) (7)(C) (phonetic throughout) is -- is saying".

13 MR. MENDELSON: I'll -- I'll withdraw -- I'll withdraw the  
14 question.

15 HEARING OFFICER ZWEIGHAFT: Okay.

16 Q BY MR. MENDELSON: How many -- how many replacement  
17 ballots were you seeking through this string of emails?

18 MR. IGLITZIN: Objection. The email speaks for itself.

19 MR. MENDELSON: Well, that -- that -- that's -- I'm not  
20 sure this is all that clear, so I think it's -- it's simple to  
21 the best benefit of the record to just get a number.

22 MR. IGLITZIN: I think the email speaks for itself, and I  
23 strongly object to --

24 HEARING OFFICER ZWEIGHAFT: Yeah. I agree. I think -- I  
25 do think that the email is clear.

1 MR. MENDELSON: I'm sorry. You're agreeing with them,  
2 Madam Hearing Officer?

3 HEARING OFFICER ZWEIGHAFT: Yeah. I agree that the email  
4 is clear. At least -- at least it is in the unredacted form,  
5 and I will have to, you know, figure out a way to deal with the  
6 redactions so that it is also clear.

7 MR. MENDELSON: Okay.

8 Q BY MR. MENDELSON: Let me -- let me ask this, Mr. Frumkin,  
9 how many replacement ballots in total did you ask the Region to  
10 provide? Not just in this email, but in the totality of this  
11 particular election case?

12 A Without having gone through every email, I think seven in  
13 total.

14 Q Okay.

15 A And of those seven here, looking at the names, five were  
16 challenged and not contested at the vote count.

17 HEARING OFFICER ZWEIGHAFT: Okay.

18 Q BY MR. MENDELSON: So directing your attention back to  
19 Employer Exhibit 61. Tell me when you have that, sir. That's  
20 the one that's dated March -- I'm sorry, April 1, 2022, at 5:47  
21 p.m.

22 A Okay.

23 Q And -- and earlier, you and I were having a discussion  
24 about when you first knew that the Region was looking at in-  
25 person voting. Previously, you and I looked at and had

1 examination the last ten minutes on your email at 7:22 p.m.  
2 The email above that from (b) (6), (b) (7)(C) to you does say that (b) (6), (b) (7)(C)  
3 (b) (6), (b) (7)(C) is handling appointments for voters to come in and vote.  
4 Do you see that sir, right?

5 A I do see the top email.

6 Q Okay. So on April 1, not only had your email made the  
7 point that voters were going to vote in person, but (b) (6), (b) (7)(C)  
8 was informing you that (b) (6), (b) (7)(C) was handling the process of  
9 making appointments for in-person voting; is that correct?

10 MR. IGLITZIN: Objection. The emails speak for  
11 themselves. This is an improper effort to have the witness  
12 characterize the content of an email that is right there for  
13 the hearing officer to read.

14 MR. MENDELSON: The witness expressed uncertainty of what  
15 he knew at the time, and so I'm utilizing the documents to try  
16 to clarify or -- or prompt his recollection so that the record  
17 is more clear on that very point.

18 MR. IGLITZIN: Then the objection is asked and answered  
19 because you already asked him --

20 HEARING OFFICER ZWEIGHAFT: I --

21 MR. IGLITZIN: -- you already him look at the email.

22 Sorry, Madam Hearing Officer.

23 HEARING OFFICER ZWEIGHAFT: I -- I agree. I think the --  
24 I think the emails are clear.

25 MR. MENDELSON: Give us just a moment. I'm trying to make

1     sure, again, that I'm not asking about the same email that's  
2     already been part of another email.

3             HEARING OFFICER ZWEIGHAFT:   Okay.

4     Q     BY MR. MENDELSON:   Oh, I'm going to show you now a  
5     document -- we'll mark it as Employer --

6             MR. MENDELSON:   I think we're up to 65; is that correct?

7             HEARING OFFICER ZWEIGHAFT:   Yes.

8     Q     BY MR. MENDELSON:   This one is dated March 23, 2022 -- I'm  
9     sorry, at 1:37 p.m.

10            MR. MENDELSON:   Again, forgive me if I've already marked  
11     it.   I don't think I have.

12            HEARING OFFICER ZWEIGHAFT:   What time did you say it  
13     begins with?

14            MR. MENDELSON:   1:37 p.m.

15            HEARING OFFICER ZWEIGHAFT:   Thank you.

16            THE WITNESS:   And it's an email from (b) (6), (b) (7)(C) ?

17     Q     BY MR. MENDELSON:   I'm sorry.   From (b) (6), (b) (7)(C) to -- that  
18     one's from (b) (6), (b) (7)(C) to you.

19     A     Okay.   But let me review it.

20     Q     Yes, sir.   I'm -- I'm only going to ask you about the very  
21     first email.   But you can read whatever you want.

22     A     Okay.

23     Q     On March 23, did you know who the (b) (6), (b) (7)(C) is  
24     that (b) (6), (b) (7)(C) references in (b) (6), (b) (7)(C) email?

25     A     I don't remember having that knowledge then.

1 Q Subsequent to March 23 -- based upon events that  
2 unfolded -- did you come to know who the (b) (6), (b) (7)(C)  
3 was who was sending out the ballots?

4 A I have a guess of who (b) (6), (b) (7)(C) was referring to based -- but I  
5 don't know for certain what people's titles are within the  
6 Agency.

7 Q So -- so I'm -- I'm -- I'm prepared to take what you're  
8 characterizing as a guess, because I think you have enough  
9 experience that you're probably drawing the correct inference.  
10 Who -- who did you --

11 MR. IGLITZIN: Yeah. I'm going to object on --

12 HEARING OFFICER ZWEIGHAFT: I --

13 MR. IGLITZIN: -- relevance, Judge.

14 HEARING OFFICER ZWEIGHAFT: Yeah. I'm going to -- yeah.  
15 I -- I don't want to guess as to who he thinks the Regional  
16 personnel are.

17 MR. MENDELSON: Well, but I think -- I think when he  
18 characterizes it a guess -- I think based on unfolded events --  
19 he -- he has a sense of who it was who handled this, and I'm  
20 interested in knowing that for the record.

21 MR. IGLITZIN: Guesses are not appropriate ever, but also  
22 my objection's based on relevance.

23 HEARING OFFICER ZWEIGHAFT: It -- it's sustained.

24 MR. MENDELSON: On 3/31/22 at 2:20 p.m., there is an email  
25 from Mr. Frumkin to (b) (6), (b) (7)(C), and I'm looking at the



1 redacted version. It begins, "(b) (6), (b) (7)(C), I am writing". I would  
2 mark this Employer Exhibit 66.

3 **(Employer Exhibit Number 66 Marked for Identification)**

4 HEARING OFFICER ZWEIGHAFT: Okay. So I have an unredacted  
5 version of that, and I -- so I believe that's what was  
6 circulated. So when it gets circulated as an obje -- as an  
7 exhibit, please send the redacted. This is --

8 MR. IGLITZIN: I'm sorry.

9 HEARING OFFICER ZWEIGHAFT: -- Exhibit 66.

10 MR. IGLITZIN: What is the date of this email trail?

11 MR. MENDELSON: March 31.

12 HEARING OFFICER ZWEIGHAFT: At 2:20, and it's a one-  
13 page --

14 MR. IGLITZIN: Thank -- thank you.

15 HEARING OFFICER ZWEIGHAFT: -- it's just the one email; is  
16 that right?

17 MR. MENDELSON: Yes.

18 THE WITNESS: I have it in front of me.

19 Q BY MR. MENDELSON: Okay. I'm -- I'm reflecting on the way  
20 this examination's gone in terms of objections, so I'm not --  
21 I'm not sure I'm going to ask you a question. It is -- it is  
22 an email you sent, correct, sir?

23 A Yes.

24 Q Okay.

25 HEARING OFFICER ZWEIGHAFT: (Indiscernible, simultaneous

1 speech) --

2 A And I'll point out that the name of the individual is also  
3 someone who appeared in a previous exhibit that you showed me.  
4 So it's not an additional request.

5 Q BY MR. MENDELSON: Ye -- yes, sir. I wasn't meaning to  
6 suggest it was. I thought I had a question for you. I would  
7 ordinarily, but rather than clutter that with objections, I'm  
8 going to move on.

9 Besides -- one moment. Besides what the documents we've  
10 looked at have shown, was there anyone else at Region 14, to  
11 your knowledge, who was making appointments for employees to  
12 come into the subregional office to vote?

13 A I don't know. But I mean, directly to my knowledge, no.  
14 There is not, to my knowledge.

15 Q Okay. Did you make any appointments for any employees  
16 with any Region 14 personnel to come into the office and -- and  
17 vote?

18 A No. As the documents we've reviewed show, the Regional  
19 staff, with whom I communicated, said that employees would need  
20 to make those arrangements on their own.

21 Q So I'm looking back, sir, at Employer Exhibit 61, the very  
22 top email from April 1, 2022, at 5:47 p.m., and -- and Mr.  
23 Iglitzin's going to have to give me a little leeway here. In  
24 the third line there's a sentence that begins, "I believe

25 (b) (6), (b) (7)(C) " -- meaning (b) (6), (b) (7)(C) -- "discussed having voters come in

1 on either Monday or Wednesday (when (b) (6), (b) (7)(C) will be in  
2 the office) if they make an appointment either directly with  
3 (b) (6), (b) (7) or indirectly with (b) (6), (b) (7) through you". So sir, let me ask  
4 again, is it the case that you made appointments on behalf of  
5 voters to go to the subregional office and vote?

6 A No. I think -- while I don't remember the specifics of a  
7 conversation in a chronological order or anything like that, I  
8 think that I wa -- I -- I was aware that the office was  
9 irregularly staffed at that point. And I understand that  
10 that's still the case, parenthetically, so I think that I had a  
11 sense of the windows when people could go in or when people  
12 would be in the office, but I don't recall creating any, you  
13 know, scheduled times for people to go in.

14 Q Okay. Sir, I'm looking at -- I'm trying to make sure I'm  
15 accurate about this -- Employer Exhibits 61 -- let me see --  
16 I'll list them for you again. 61, 63, 64, 65, and 66. So it's  
17 61 through 66, but omitting 62. And -- and you're welcome to  
18 look at them. I do not believe Ms. Doud, Ms. Carter, or any  
19 other Company representative is on any of the emails in these  
20 strings. And assuming I'm correct about that, was the -- to  
21 the extent you wrote any of these emails, was the decision to  
22 omit Company counsel or Company personnel deliberate?

23 A As far as a decision, I was acting within my position as  
24 an attorney at that point, and I'm not sure I feel comfortable  
25 answering that question.

1 Q Well, I'm -- you say you were acting as an attorney. I --  
2 I would represent to you or take the position you were acting  
3 in a fact witness basis because you were an actor in -- in the  
4 stream of events here. So I'm not asking for any legal  
5 judgment; I'm asking whether you made a conscious decision to  
6 not include any Company representative on these communications  
7 when you authored it?

8 A I'm sorry, can you answer (sic) that question again?

9 Q I can ask it again. I can't answer it.

10 HEARING OFFICER ZWEIGHAFT: I think I -- I understand  
11 the -- again, I think this is a case where the document speak  
12 for itself whether it was an inadvertent or -- or not, I don't  
13 know how relevant that is, but your -- your point is taken.

14 Q BY MR. MENDELSON: Let me ask a related question. In any  
15 of the instances on Employer Exhibits 61 through 66, omitting  
16 Employer Exhibit 62, do you have a recollection of ever  
17 indicating to any of the other people in the -- the stream of  
18 emails -- the stream of emails that they should include Company  
19 counsel or any other Company representative in their emails?

20 MR. IGLITZIN: I'm going to object. The emails speak for  
21 themselves.

22 HEARING OFFICER ZWEIGHAFT: Okay. I think that's a  
23 different question. I'll allow it. If you -- it -- it was a  
24 little convoluted, maybe. Mr. Frumkin, do you understand the  
25 question?

1 THE WITNESS: I may understand it on the second go around.  
2 Could you please repeat it?

3 Q BY MR. MENDELSON: Yes -- yes, sir. So in those -- the  
4 same emails, 61 and then 63 through 66, when someone else was  
5 the author and you received an email -- whether you were the  
6 only recipient or there were others -- and none of the  
7 recipients were Company counsel or Company representatives --  
8 did you, to the best of your recollection, communicate to any  
9 of those other authors that they should also email or contact  
10 in any other way Company representatives or Company counsel  
11 with the substance of the communication?

12 MR. IGLITZIN: And I'm going to renew my objection. The  
13 five emails speak extremely clearly for themselves as to what  
14 communications Mr. Frumkin did -- did -- did not make.

15 MR. MENDELSON: Well, that -- that's not true. He may  
16 have had --

17 HEARING OFFICER ZWEIGHAFT: He's --

18 MR. MENDELSON: -- phone communication.

19 HEARING OFFICER ZWEIGHAFT: Okay. He's asking a different  
20 question. Mr. Frumkin, do you understand the question?

21 THE WITNESS: I do understand the question.

22 HEARING OFFICER ZWEIGHAFT: Okay. Can -- can you answer  
23 it?

24 THE WITNESS: I do not recall additional conversations  
25 specifically outside of this -- outside of the exhibits that

1     you cite, except for as, you know, my memory has been informed  
2     by the letter that you -- you know, that Littler and Starbucks  
3     sent.

4     Q     BY MR. MENDELSON: Well, you -- you can reference that as  
5     you have before. I guess, sitting here today, under oath, you  
6     don't have a recollection of a conversation orally or any other  
7     email that might not still be in your firm's records, asking or  
8     suggesting that authors of other emails in these strings add  
9     Littler or some other representative of Starbucks to the  
10    communication?

11    A     Correct.

12    Q     Okay. Thank you.

13           MR. MENDELSON: So Madam Hearing Officer, I -- I have  
14    deviated significantly from my hearing outline in an effort to  
15    comply with your direction. I think what would make sense is  
16    for us to take a few minutes so I can talk to my cocounsel to  
17    see what, if anything, they suggest that I still ask. And then  
18    for me to just comb through my outline, which is not  
19    particularly long for this particular witness, and to see  
20    whether there's anything else I wish to ask and come up -- come  
21    back and endeavor to finish my direct examination.

22           HEARING OFFICER ZWEIGHAFT: How long do you think you  
23    need?

24           MR. MENDELSON: Well, to be -- to be not rushed and to be  
25    thorough, I would suggest maybe we come back at 10 to 5?

1 HEARING OFFICER ZWEIGHAFT: All right. I will -- all  
2 right. Let's -- let's take -- okay, let's come back at 10 to  
3 5. Mr. Mendelson, I would ask -- also when you come back --  
4 I -- I know you're reading from a few different things. If --  
5 if you could try to stay on camera a little bit more?

6 MR. MENDELSON: Oh, sorry.

7 HEARING OFFICER ZWEIGHAFT: I think that would be --

8 MR. MENDELSON: I'll -- I'll raise my --

9 (Indiscernible, simultaneous speech)

10 HEARING OFFICER ZWEIGHAFT: Okay. And it would just be a  
11 little bit more helpful.

12 MR. MENDELSON: Okay. Thank you.

13 HEARING OFFICER ZWEIGHAFT: Okay. Off the record.

14 (Off the record at 4:28 p.m.)

15 **RESUMED DIRECT EXAMINATION**

16 Q BY MR. MENDELSON: Just -- just a few more questions, Mr.  
17 Frumkin. Prior to becoming an attorney, am I correct that you  
18 had involvement in NLRB proceedings?

19 MR. IGLITZIN: I'm going to object on relevance grounds.

20 HEARING OFFICER ZWEIGHAFT: Sustained.

21 Q BY MR. MENDELSON: Do you recall a conversation on March  
22 31 by phone with (b) (6), (b) (7)(C) at Region 14?

23 A No. I -- I understand that the Employer has represented  
24 that such a call happened, and I am willing to accept that  
25 representation, but I know of -- I have no recollection of the

1 substance of it.

2 Q Did you tell (b) (6), (b) (7)(C) -- I'm not sure what date -- that  
3 Region 19 has allowed the Union to make arrangements for in-  
4 person voting in mail-ballot elections?

5 MR. IGLITZIN: I'm going to object on relevance grounds.  
6 This is an allegation Starbucks has made in its letter from two  
7 days ago, but it obviously has no relevance at all to whether  
8 Region 14 somehow mishandled this election.

9 MR. MENDELSON: Well, it has relevance because it appears  
10 that -- that that would be an assertion by either the Region or  
11 the Union that nothing went amiss here. So I think I'm  
12 entitled to know as a fact matter whether Mr. Frumkin said that  
13 to (b) (6), (b) (7)(C) .

14 MR. IGLITZIN: I strongly disagree whether Region 19 has  
15 done things similar to what Region 14 does here is something  
16 that can be explored and actually has no legal relevance  
17 anyway. But we're getting into a communication Mr. Frumkin  
18 made in his role as an advocate. And there is no allegation in  
19 this case that relates to my firm or Mr. Frumkin's behavior.  
20 Allegations have been made in other context about our behavior,  
21 but in this hearing it's about whether Region 14 in some way  
22 mishandled the election such that it needs to be rerun.

23 HEARING OFFICER ZWEIGHAFT: Sustained.

24 MR. MENDELSON: Oh --

25 HEARING OFFICER ZWEIGHAFT: Sustained.



1 Q BY MR. MENDELSON: On March 23, did you express to one or  
2 both (b) (6), (b) (7)(C) and/or (b) (6), (b) (7)(C) that the Union was frustrated by the  
3 failure of the Region to get replacement ballots out?

4 MR. IGLITZIN: I'm going to ask for clarification. Are we  
5 talking about authenticating a written communication or are we  
6 asking about a -- a communication other than those evidenced in  
7 the emails?

8 MR. MENDELSON: Well, I'm -- I'm not certain it's a verbal  
9 communication, although I would surmise that based upon what  
10 the Union -- Union counsel has produced today. But whether by  
11 email or verbally or by text or any other medium, I'm asking  
12 whether Mr. Frumkin expressed frustration to one or the other  
13 of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) -- about getting replacement ballots out.

14 MR. IGLITZIN: Same objection. Whether the Union is  
15 frustrated or not frustrated has nothing to do with whether the  
16 Region conducted this election properly.

17 MR. MENDELSON: Well, I -- I disa --

18 HEARING OFFICER ZWEIGHAFT: I'll -- I'll allow the  
19 question.

20 THE WITNESS: You're a -- can you repeat the question, Mr.  
21 Mendelson?

22 Q BY MR. MENDELSON: Did you ask --

23 MR. MENDELSON: Strike that.

24 Q BY MR. MENDELSON: Did you express to one or both (b) (6), (b) (7)(C)  
25 and/or (b) (6), (b) (7)(C) your frustration or the Union's frustration that

1 replacement ballots had not yet been sent out on or about March  
2 23?

3 A I don't remember having that conversation, but I would  
4 doubt it because the exhibit that you showed me earlier today  
5 was the first time that I had requested any replacement  
6 ballots, and that was on March 23rd.

7 Q Okay. So let me ask this question, on or before April 1,  
8 did you express frustration to (b) (6), (b) (7)(C) and/or (b) (6), (b) (7)(C) on behalf of  
9 yourself and/or the Union that replacement ballots had not yet  
10 been sent out?

11 MR. IGLITZIN: I'm going to renew my objection because  
12 this really goes to Starbucks' great collusion theory, which is  
13 for the public, but has not relevance to whether Region 14  
14 operated this election properly. Advocates call up executive  
15 branches, officers, all the time and say, you know -- you know,  
16 why has a complaint not issued? And why are you not seeking  
17 10(j) relief? And it has no relevance as to how this election  
18 was run.

19 MR. MENDELSON: It -- it -- it's --

20 HEARING OFFICER ZWEIGHAFT: Over -- overruled. I'm going  
21 to allow the question.

22 THE WITNESS: Can you repeat the question, Mr. Mendelson?

23 Q BY MR. MENDELSON: On April 1 or before, did you express  
24 your frustration, or the Union's frustration, to one or both  
25 (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) that replacement ballots had not yet been

1 mailed out?

2 A I understand the representation that you're -- that --  
3 that was published by Littler and Starbucks in the last couple  
4 of days and saw that. I don't recall a specific communication  
5 one way or the other, though --

6 MR. IGLITZIN: I'm -- I'm going to stop you there, Gabe.  
7 If you don't recall -- if the answer to the question is you  
8 don't recall doing that then -- then that's where we should  
9 stop.

10 MR. MENDELSON: I -- I'm going to take the answer to be  
11 what he said, that he doesn't have a recollection. I'm also  
12 going to ask the witness not to reference representations. I'm  
13 asking questions based upon my understanding of fact. I don't  
14 know why we have to turn it into more than that. Excuse me?

15 HEARING OFFICER ZWEIGHAFT: No. We don't need a  
16 discussion on that. Thank you for the representation. Let's  
17 move on.

18 Q BY MR. MENDELSON: On or about April 1, did you learn that  
19 (b) (6), (b) (7)(C) had communicated with (b) (6), (b) (7)(C) regarding how to  
20 distribute ballots in connection with this election?

21 A I don't -- do you mean by email or by phone call?

22 Q I'm -- I'm asking the broad question. Did you learn that  
23 (b) (6), (b) (7)(C) had communicated with (b) (6), (b) (7)(C) on or about April 1  
24 about getting ballots to voters? Or having -- getting --  
25 getting voters to ballots?

1 MR. IGLITZIN: So I'm going to object. The question is  
2 too broad. We've just -- you know, a whole bunch of emails.  
3 If the question is "did you communicate that through emails"  
4 the emails speak for themselves. So the proper question is  
5 "outside of the emails, do you recall having a communication  
6 like that".

7 HEARING OFFICER ZWEIGHAFT: Okay.

8 MR. MENDELSON: You can -- you can answer the question --

9 MR. IGLITZIN: Otherwise, it's just --

10 HEARING OFFICER ZWEIGHAFT: Over --

11 MR. IGLITZIN: -- otherwise, it's just a quiz.

12 HEARING OFFICER ZWEIGHAFT: Over -- it -- it's --

13 MR. IGLITZIN: Otherwise, it's just a memory test. I'm  
14 going to ask Gabe to look at all five emails again to refresh  
15 his recollection --

16 HEARING OFFICER ZWEIGHAFT: Okay.

17 MR. IGLITZIN: -- as to what he said in those emails.

18 MR. MENDELSON: I -- I -- I'll -- you know, I -- I'm  
19 reading some of these emails for the first time, so I take some  
20 exception that I'm trying to trick the witness, which is  
21 implicit in Mr. Iglitzin's statement. I'm asking the  
22 question -- he's welcome to read the emails again. I have no  
23 idea. I'm simply asking, on or about April 1, did he learn --  
24 did he learn that (b) (6), (b) (7)(C) had communicated with (b) (6), (b) (7)(C)  
25 about either getting ballots to voters or voters to ballots.

1 MR. IGLITZIN: And I'm going to object on relevance  
2 grounds.

3 HEARING OFFICER ZWEIGHAFT: Oh --

4 MR. IGLITZIN: This is about what the Region did, not what  
5 Mr. Frumkin did or did not learn on a certain day.

6 HEARING OFFICER ZWEIGHAFT: Overruled.

7 MR. MENDELSON: Well, do --

8 HEARING OFFICER ZWEIGHAFT: Overruled. You can answer the  
9 question.

10 MR. IGLITZIN: All right. Gabe, if you need to look at  
11 the April 1 emails again to refresh your recollection, please  
12 do so.

13 HEARING OFFICER ZWEIGHAFT: Okay. And we -- I don't --  
14 Mr. Frumkin can certainly let us know if he needs to review  
15 something.

16 THE WITNESS: Thank you. I would need to look at the  
17 emails -- the exhibits that have been introduced just because I  
18 don't recall the exact progression of them. What I can say is  
19 I don't recall outside of those any specific conversations on  
20 or about April 1st.

21 Q BY MR. MENDELSON: Okay. Well, the emails speak for  
22 themselves. I have no idea whether what I've asked is implicit  
23 or explicit in any of those emails. So you've answered the  
24 question. Because I guess my question, while broad, was really  
25 looking for something apart from the emails. The emails, as

1 Mr. Iglitzin has reminded us, speak for themselves.

2 HEARING OFFICER ZWEIGHAFT: Okay. Let's move on.

3 Q BY MR. MENDELSON: Were you aware on April 4, which was a  
4 Monday, that several employees had phoned the Region to make  
5 appointments to vote that day? By the way, I would use names,  
6 but I'm trying to be respectful of the Union's preference that  
7 I not do so.

8 MR. IGLITZIN: I'm going to object on the relevance  
9 grounds and lack of foundation. And Mr. Frumkin --

10 HEARING OFFICER ZWEIGHAFT: You can --

11 MR. IGLITZIN: -- has testified, I believe, that he did  
12 not talk to workers directly. So he would have at best only  
13 secondhand information. But primarily, it's relevance. What  
14 Mr. Frumkin was aware of is not relevant to any of the  
15 objections actually pending in this hearing.

16 HEARING OFFICER ZWEIGHAFT: Okay. I'm not -- not sure  
17 that that was the way the question was asked. Maybe, Mr.  
18 Mendelson, can you rephrase it? I -- may -- I -- I think it  
19 wasn't clear.

20 MR. MENDELSON: Well, I'll rephrase it if I can. I don't  
21 think there's anything objectionable. I'm trying to find out  
22 the role of the Union and the Region, respectively, in what the  
23 Employer has objected to. Was he aware on --

24 Q BY MR. MENDELSON: Mr. Frumkin, were you aware on April 4  
25 that several employees had phoned the Region to make

1 appointments to come into the subregional office to vote in  
2 person?

3 MR. IGLITZIN: So I want to object in part because Mr.  
4 Mendelson has said something very revealing -- that he wants to  
5 probe into the role of the Union and the Region. But the  
6 Union's role is not at issue in this hearing, only the Region's  
7 conduct.

8 HEARING OFFICER ZWEIGHAFT: Overruled.

9 A So I -- I recall the email in which I believe it was (b) (6), (b) (7)(C)  
10 (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) would not tell me who had voted or even  
11 who had scheduled a time to vote. And so I wouldn't have  
12 learned that from Region 14. And so the only other way that I  
13 would have remembered that -- or -- or learned of that, if I  
14 had, would be attorney-client protected.

15 HEARING OFFICER ZWEIGHAFT: Okay. So that's -- I don't  
16 want to -- I -- I think you've answered the question for the  
17 purposes of the hearing then. Go ahead.

18 MR. MENDELSON: So -- so I have to ask the follow-up  
19 question because Mr. Iglitzin said something that I don't think  
20 I understood.

21 Q BY MR. MENDELSON: Is it the case, sir, that you -- in  
22 connection with this case, you did not speak to employees in  
23 the two-week interval -- I'll pick that arbitrarily -- the two-  
24 week interval leading up to the vote count?

25 HEARING OFFICER ZWEIGHAFT: Okay. I --

1 MR. IGLITZIN: I'm actually going to object.

2 HEARING OFFICER ZWEIGHAFT: Yeah. We're -- I'm sustaining  
3 my own objection to that. I don't want to -- I don't want to  
4 get into his discussion with employees.

5 MR. MENDELSON: Well, I don't want to get into the  
6 substance of it. I'm entitled to know whether he had a  
7 communication.

8 MR. IGLITZIN: I don't believe so.

9 HEARING OFFICER ZWEIGHAFT: I -- I'm sustaining that  
10 objection.

11 Q BY MR. MENDELSON: Am I correct, sir, that the vote count  
12 in this case was attended by four Board agents from Region 14?

13 A The vote count, you asked?

14 Q Yes, sir.

15 A I don't recall that specific fact.

16 Q Let -- let me -- let me go at it this way. You -- you  
17 were present for the vote count remotely, correct?

18 A I watched it by Zoom, like everyone else.

19 Q Okay. That's what I call remote. (b) (6), (b) (7)(C) was part of  
20 that vote count, correct?

21 A I actually don't recall if (b) (6), (b) (7)(C) was there or not. I  
22 remember -- I think it must've been (b) (6), (b) (7)(C) was the one who  
23 actually conducted the count. And I don't recall who -- with  
24 certainty -- who else attended.

25 MR. IGLITZIN: So I'm going to object to this line of



1 questioning because Starbucks has access to a number of people  
2 who were present at the vote count, including both Ms. Carter  
3 and Ms. Doud, as I recall. And it's not appropriate for them  
4 to try to elicit from my cocounsel in this case information  
5 that any of a number of people who were on Zoom during that  
6 vote count could attest to. As you know, I strongly have  
7 objected to the very premise of Mr. Mendelson being able to ask  
8 questions to my cocounsel on this matter. There's certainly no  
9 reason -- other than questions that only Mr. Frumkin could have  
10 the knowledge to answer -- for him to be questioned about this.

11 MR. MENDELSON: I -- I'm trying to be efficient so we can  
12 contract the scope of this hearing, not expand it.

13 MR. IGLITZIN: I'm not actually particularly interested in  
14 efficiency. I'm interested in justice and respecting the  
15 rights of the parties.

16 HEARING OFFICER ZWEIGHAFT: Okay. So I agree that you  
17 have other witnesses that -- open to you for the vote count.  
18 If you -- if it comes up that you need to recall Mr. Frumkin  
19 for a specific reason for this topic, we can discuss that  
20 later, but I -- I agree. Let's stick to the emails for now.

21 MR. MENDELSON: You know, I'd -- I'd like to make an offer  
22 of proof in connection with -- well, I'd like to ask a  
23 question. If it's objected to and you sustain the objection,  
24 then I'd like to make an offer of proof on that question.  
25 Here's one where I can do it on -- on the fly. May I ask the

1 question, which I think is probative? And it's not about the  
2 emails, but I think it's central to this.

3 HEARING OFFICER ZWEIGHAFT: Okay. I'll allow it. You can  
4 ask it and we'll see where it goes.

5 Q BY MR. MENDELSON: In your experience, sir, for a group of  
6 approximately 20 employees, typically, how many Board agents  
7 are participants on behalf of the Region on a vote count?

8 HEARING OFFICER ZWEIGHAFT: Okay.

9 MR. IGLITZIN: I'm -- I'm objecting.

10 HEARING OFFICER ZWEIGHAFT: And I'm sustaining it.

11 MR. IGLITZIN: And I have to say, I don't think there's  
12 any -- you can make a representation to the Region as to what  
13 you think the answer is, but you have no foundation that Mr.  
14 Frumkin, who does not have --

15 HEARING OFFICER ZWEIGHAFT: I don't happen to think that  
16 it's relevant at this point. You can move on.

17 Q BY MR. MENDELSON: During the vote count, sir, did you  
18 hear (b) (6), (b) (7)(C) state that --

19 MR. MENDELSON: Strike that.

20 Q BY MR. MENDELSON: During the vote count when an inquiry  
21 was made by Ms. Doud regarding the absence of postmark dates on  
22 several ballots, did you hear (b) (6), (b) (7)(C) reply that the voters  
23 had "made arrangements per -- per Board protocol" or words to  
24 that effect?

25 MR. IGLITZIN: I am objecting on the basis that if there's

1 going to be testimony of that vote count it should come from a  
2 proper witness, not from opposing counsel. There are many  
3 people can testify to this.

4 HEARING OFFICER ZWEIGHAFT: Sustain --

5 MR. MENDELSON: This --

6 HEARING OFFICER ZWEIGHAFT: I'm going to sustain that. We  
7 did not -- we discussed what the parameters would be. Again,  
8 if -- I understand that you have other witnesses for this. If  
9 we come to a point where you need to ask Mr. Frumkin a question  
10 about this, you can recall him later if we decide that that's  
11 appropriate, but I don't -- I -- I agree, we're not going to  
12 get into that now with this witness. You can call another  
13 witness.

14 MR. MENDELSON: Well, okay. I had another question, which  
15 I won't answer -- I won't ask. At this point, I'd like to move  
16 the admission of Employer Exhibits 61 through 66. I think  
17 those are the ones that I marked.

18 HEARING OFFICER ZWEIGHAFT: Yeah. Any objections?

19 MR. IGLITZIN: You know, I think I only received 61 and 62  
20 via email. But I have no objection as long as these are  
21 redacted --

22 HEARING OFFICER ZWEIGHAFT: Right.

23 MR. IGLITZIN: That the ones that need to be redacted are  
24 redacted.

25 HEARING OFFICER ZWEIGHAFT: Okay. Yeah. We will -- we

1 will make sure that we have direct -- redacted copies that are  
2 the ones that are submitted into the record. Ms. Schneider,  
3 any objections?

4 MS. SCHNEIDER: No objections.

5 HEARING OFFICER ZWEIGHAFT: Okay.

6 MR. MENDELSON: And -- and -- and then consistent with  
7 what Mr. Iglitzin said at the outset, those that I did not use  
8 to examine Mr. Frumkin -- and I haven't marked them yet, but we  
9 will, beginning with Employer Exhibit 67 -- I think we'd like  
10 to mark those and also move them into evidence even though we  
11 did not examine the witness regarding them.

12 MR. IGLITZIN: Once they are prepared and circulated, I  
13 imagine we will stipulate to they're being -- only object on  
14 relevance grounds, but not on authenticity grounds.

15 HEARING OFFICER ZWEIGHAFT: Okay. Well, I don't -- let's  
16 do that once we've had a chance to look through them and see if  
17 they need to be redacted and mark them. And I don't think we  
18 need to spend the time on the record marking -- going through  
19 and marking everything and identifying it right now. We can do  
20 that after a break when we can do it more quickly.

21 MR. MENDELSON: Okay. I -- I have no further questions of  
22 this witness at this time. I do reserve the right to re-call  
23 him, particularly in view of some of the rulings in the last  
24 ten minutes or so.

25 HEARING OFFICER ZWEIGHAFT: Yep. I understand that.

1 Okay. Mr. Iglitzin, do you have any questions for Mr. Frumkin?

2 MR. IGLITZIN: I do not.

3 HEARING OFFICER ZWEIGHAFT: Okay. Ms. Schneider?

4 MS. SCHNEIDER: I do have just a couple of questions.

5 **CROSS-EXAMINATION**

6 Q BY MS. SCHNEIDER: Mr. Frumkin, were you ever told by the  
7 Region that eligible voters -- or yeah -- that eligible voters  
8 would need to contact the Region directly about their lack of  
9 receipt of ballots?

10 A No.

11 Q Okay. And on Employer --

12 A Well, I'm -- I'm sorry to -- to -- I -- I -- I think I  
13 want to clarify there. What my recollection was -- was that  
14 according to the documents we reviewed earlier, the -- they  
15 would have to call and set up time to -- to go to the office.

16 Q Okay. And were you able to make those arrangements for  
17 them?

18 A Not -- no.

19 Q Okay. Referring to Employer Exhibit 64. Do you have that  
20 handy? It's an email chain. The -- at the top -- it's a two-  
21 page document. And the first email at the top is 3/23/22 at  
22 1:39:51 p.m.

23 A Thank you for your help. 1:39 p.m., you said?

24 Q 1:39 p.m., yes.

25 A And it's from me to --

1 Q It -- right. It starts with an email from you to (b) (6), (b) (7)(C)  
2 (b) (6), (b) (7)(C). The subject --

3 A I'm with you. Yes. Thank you.

4 Q You see it? Okay.

5 A Thank you.

6 Q And the first email is -- it speaks for itse -- I'm not  
7 trying to you know, testify about the document, but "three more  
8 voters had not received ballots". That's the first email in  
9 the chain. You see that document?

10 A I am tracking.

11 Q Okay. You testified earlier that in this -- and the  
12 document demonstrates that -- in this email chain, you notified  
13 the Region of seven people who had not received ballots.  
14 Are -- are you aware of those seven how many were challenged by  
15 the Employer?

16 A Yes, I am.

17 Q And can you share that information?

18 A I -- five of these individuals had their ballots  
19 challenged, and then --

20 Q And --

21 A Please?

22 Q And --

23 A Go ahead.

24 Q Is it accurate that all of the challenges were -- none of  
25 the challenged ballots have been counted? It was agreed by the

1 parties to not count those ballots; is that correct?

2 MR. MENDELSON: Objection.

3 HEARING OFFICER ZWEIGHAFT: What's the objection?

4 MR. MENDELSON: Well, actually, there's -- there's a flaw  
5 in the question. But I'll -- I'll withdraw the objection.  
6 I'll let the witness answer.

7 MS. SCHNEIDER: There -- there was no agreement between  
8 the parties.

9 MR. MENDELSON: Well --

10 MS. SCHNEIDER: That was your objection.

11 MR. MENDELSON: Ye -- yes. But -- but let -- let the  
12 witness answer.

13 A So my understanding -- or my recollection -- is that -- a  
14 bit more background -- the Employer objected to seven ballots  
15 in total of which five of them were listed -- five of the  
16 voters were listed in these emails. The Union did not object  
17 to any, nor did it contest the challenges that the Employer  
18 made. So the -- my understanding is the Region that was  
19 charged with investigating these, basically, issued a revised  
20 tally of ballots, discounting all seven challenged ballots,  
21 including the five that were listed in this email.

22 Q BY MS. SCHNEIDER: Thank you. And the other two people  
23 who were listed in these emails, do you know whether they voted  
24 in the election?

25 A The other two?

1 Q Correct.

2 A Who are listed?

3 Q Who are listed on the Employer Exhibit 64?

4 A I do know that one of them did not have the -- the --  
5 they -- they may have voted, but their ballot was not counted.  
6 It did not arrive at the Region.

7 Q Okay.

8 A Does that make sense?

9 Q Yes.

10 A So only one was counted, is -- is really what I'm saying.

11 Q Thank you.

12 MS. SCHNEIDER: I don't have further questions.

13 MR. MENDELSON: I -- I do have redirect.

14 HEARING OFFICER ZWEIGHAFT: Okay. Go ahead.

15 **REDIRECT EXAMINATION**

16 Q BY MR. MENDELSON: So sir, just to clarify what I think is  
17 rather unclear on the record, isn't it true that there is no  
18 agreement by all parties to have cleared the challenged  
19 ballots?

20 A I recall the Employer objecting to the Board process that  
21 resulted in the issuance of a revised tally of ballots, but I  
22 don't recall the exact specifics of how it got there.

23 Q So sir, do you -- do you have custody -- I'm not -- I'm  
24 not attacking the Union or Union counsel here for not having  
25 produced it. Do you have custody of either an agreement



1 establishing that the challenges are cleared or alternatively a  
2 draft agreement that, one, either the Union or the Union and  
3 the Region signed, but the Employer didn't?

4 Relating to clearing challenges?

5 A Can you -- I'm sorry. Can you ask the question again?

6 HEARING OFFICER ZWEIGHAFT: All right. I'm going to --  
7 I -- I'm not sure how -- I will say I'm not sure how relevant  
8 this is. The chall -- there are no challenges before me in  
9 this case.

10 MR. MENDELSON: May -- may I interrupt you just to explain  
11 why I think it's become pertinent? I certainly didn't ask  
12 about it. I -- I actually had on my to-do list, if we had done  
13 housekeeping, make a request of either the Union or the Region  
14 that it generate whatever document concluded the matter of the  
15 challenged ballots, because I -- I thought maybe it belongs in  
16 the formal papers. And it occurred to me last night.

17 I'm -- I was not a participant in the election. But --  
18 but now that -- now that Region 14 -- or excuse me -- I'm not  
19 sure if [REDACTED] from Region 29, but -- now that -- that a region  
20 has opened this up, whether it's a part of the formal papers or  
21 it's an exhibit, I do think we should have clarity because, in  
22 the opening arguments, I believe Mr. Frumkin, or perhaps it was  
23 Mr. Iglitzin just in another colloquy, took the position that  
24 the clearing of the challenges is that -- makes it as if those  
25 ballots were never cast.

1 But the Employer respectfully disagrees, so I think we  
2 need to have documentation that establishes what happened to  
3 those challenged ballots.

4 HEARING OFFICER ZWEIGHAFT: Okay.

5 MR. IGLITZIN: Yeah. I'm going to object to this line of  
6 questions as posed to Mr. Frumkin. I mean, I understand --

7 HEARING OFFICER ZWEIGHAFT: I -- no, I -- I don't think  
8 Mr. Mendelson meant to get into that with this witness at all.  
9 I -- I think that's fine. I think we can -- I -- I don't think  
10 that's proper for this witness at this point. So why don't  
11 we -- we can -- let me see what we have, and I can see if we  
12 can enter it. I don't think it would be part of the formal  
13 papers in this case, but we can look and see whether it gets --  
14 we can put it in the record somehow.

15 MR. MENDELSON: So -- so if you would just give us one  
16 minute -- literally one minute -- I just want to talk to my  
17 co-counsel to make sure they have nothing further for me to ask  
18 on redirect. I don't -- I don't want to be presumptuous and --  
19 and say we're done when they might have something to ask.

20 HEARING OFFICER ZWEIGHAFT: Okay. One minute.

21 MR. MENDELSON: Thank you.

22 (Counsel confer)

23 HEARING OFFICER ZWEIGHAFT: Okay. Let's go -- Adrian, I  
24 don't know if you've taken us off the record, but let's go off  
25 the record.

1 (Off the record at 5:17 p.m.)

2 **RESUMED REDIRECT EXAMINATION**

3 Q BY MR. MENDELSON: Mr. Frumkin, if I could direct your  
4 attention to Employer Exhibit 64.

5 A Can you remind me which --

6 Q Yeah, that's okay. I'm sorry. I'm sorry. March 23,  
7 2022, at 1:39, from you to (b) (6), (b) (7)(C) .

8 A Oh, okay. 1:39, on March 23rd, we --

9 Q Yes, sir.

10 A Okay. I'm tracking.

11 Q Okay. Tell me when you have it.

12 A I do.

13 Q So looking at that top email or the -- the -- the top of  
14 the page, the last in the string, there are two people listed  
15 there, two voters listed there, who you did not provide  
16 addresses to (b) (6), (b) (7)(C) for them, correct?

17 A Correct.

18 Q And is one of those two a person who you had just, in  
19 responding to Ms. Schneider's question, indicating that, so far  
20 as you were aware, no ballot was received by the Region?

21 A Forgive me. I -- I was looking at the redacted version,  
22 so I'm going to look at the unredacted version just to confirm  
23 that.

24 Q Okay.

25 A Will you bear with me?



1           You're asking if, in the top email, at one -- the one sent  
2           at 1:39 p.m., one of the two people without addresses is one of  
3           the ones who voted or didn't vote?

4           Q     Well, I -- I understood your response to Ms. Schneider's  
5           question to be very specific that there was a person among the  
6           seven who, as you understood it, their -- their ballot was  
7           never received by the Region. I'm asking you to confirm  
8           whether the last of the three names in that top email is the  
9           person to whom you refer.

10           HEARING OFFICER ZWEIGHAFT: Okay. I don't -- I don't  
11           think we need to get that in this record.

12           MR. MENDELSON: With all due respect, Madam Hearing  
13           Officer, I think it's potentially probative, and so that's why  
14           I'd like to -- if that's who he was talking about, I'd like him  
15           to confirm it.

16           A     Well, the -- the Region published a list of those whose  
17           ballots were challenged, and the two individuals here were not  
18           on that list. So it had to be one of those two, I believe.

19           Q     BY MR. MENDELSON: Okay.

20           MR. MENDELSON: No further questions.

21           HEARING OFFICER ZWEIGHAFT: Okay. So I believe Exhibit 61  
22           through 66 were offered. I don't -- I think we need redacted  
23           copies of some of those. I -- and I think then we discussed  
24           the other emails, but I don't know if I ever actually received  
25           them. So hearing no objection, I'm receiving Employer's

1 Exhibits 61, 62, 63, 64, 65, and 66.

2 MR. IGLITZIN: So actually, I need to clarify. I have not  
3 received copies of Exhibits 63 through 66. I --

4 HEARING OFFICER ZWEIGHAFT: Oh, excuse me. I'm sorry. I  
5 thought -- I --

6 MR. IGLITZIN: -- (audio interference) the Employer.

7 HEARING OFFICER ZWEIGHAFT: I thought there was no  
8 objection. I'm sorry.

9 MR. IGLITZIN: There will -- I anticipate there will be no  
10 objection.

11 HEARING OFFICER ZWEIGHAFT: Okay.

12 MR. IGLITZIN: But I need to see what the exhibit actually  
13 is, and I need to review the redactions or at least, you know,  
14 have an opinion on whether the redactions were properly done.

15 HEARING OFFICER ZWEIGHAFT: Okay. And --

16 MR. IGLITZIN: I just think we should defer that.

17 HEARING OFFICER ZWEIGHAFT: For 6 -- okay, so that's fine.  
18 So for which -- which ones have you not received, Mr. Iglitzin?

19 MR. IGLITZIN: 63 through 66.

20 HEARING OFFICER ZWEIGHAFT: Okay. So I will receive right  
21 now 61 and 62. Employer's 61 and 62 are received.

22 **(Employer Exhibit Numbers 61 and 62 Received into Evidence)**

23 HEARING OFFICER ZWEIGHAFT: Okay. And I will make a note  
24 that we need to discuss 63 through 66 once you have a copy of  
25 it, okay?

1 MR. IGLITZIN: Okay.

2 HEARING OFFICER ZWEIGHAFT: Okay. Mr. Mendelson, do you  
3 have another witness?

4 MR. MENDELSON: Well, I think, at this time, it would be  
5 appropriate for us to address the petition to revoke, insofar  
6 as it relates to the specific employees that we had served  
7 subpoenas on.

8 HEARING OFFICER ZWEIGHAFT: Okay.

9 MR. MENDELSON: I -- I can say to you that, if we had  
10 successfully resolved with the General Counsel and/or the  
11 Regional Director our desire for the Region's records that were  
12 subpoenaed, it is plausible that those witnesses would not be  
13 necessary. But in the absence of having resolved that, I can't  
14 say that. So I think, at this time, our request would be that  
15 we present to you, or actually the Union presents to you, its  
16 petition to revoke, and we address that.

17 HEARING OFFICER ZWEIGHAFT: Okay. So that's the petition  
18 to revoke the subpoenas ad testificandum?

19 MR. MENDELSON: And I think there were duces tecums, as  
20 well.

21 HEARING OFFICER ZWEIGHAFT: Okay. Oh, yes, for -- for two  
22 of them, right?

23 MR. MENDELSON: I think -- I think it's two only were ad  
24 testificandum. I think those two were -- just give me a  
25 moment -- (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C). But in contrast,

1 Sarah (phonetic throughout) Quigley, Alydia Claypool, and  
2 Calvin Culey received both duces tecums and ad testificandums.

3 HEARING OFFICER ZWEIGHAFT: Okay.

4 MR. FRUMKIN: Can you say that again, Mr. Mendelson?

5 MR. MENDELSON: Yes. I -- I believe that Claypool, Culey,  
6 C-U-L-E-Y, and Quigley received both ad testificandums and  
7 duces tecums, whereas, in contrast, (b) (6), (b) (7)(C) and -- (b) (6), (b) (7)(C)  
8 (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) only received ad testificandums.

9 HEARING OFFICER ZWEIGHAFT: Okay. So I think that's  
10 different than the petitions I have to revoke, unless I'm  
11 perhaps missing. I have the five that were in the Regional  
12 Director's order. So my understanding -- and somebody correct  
13 me because I may not be -- I may not have all the documents  
14 then.

15 The Petitioner's petition to revoke for the duces tecum  
16 with resp -- with respect to the employees -- the copy that I  
17 have, I believe, was -- were only for two duces tecum, which I  
18 believe were served on Claypool and Quigley. And then, for the  
19 ad testificandum, I believe it refers to Claypool, Culey,  
20 (b) (6), (b) (7)(C), and Quigley, as well as Frumkin and Iglitzin.

21 MS. DOUD: I think, if I may, to help clarify, we can  
22 direct you to the exhibits. We can circulate the corrected  
23 Exhibits 1 through 35, and it might be helpful to go through it  
24 that way.

25 HEARING OFFICER ZWEIGHAFT: Well, these are the

1     Petitioner's petitions to revoke, so I just want to make sure  
2     I'm clear as to which petition -- which subpoenas we're talking  
3     about. Are there -- are there other petitions to revoke  
4     outstanding that are not -- that I don't have a copy of?

5             MR. FRUMKIN: I need to sort of line that up myself. I'm  
6     very sorry for the confusion here. Bear with me. I'm  
7     switching hats as quickly as I can.

8             HEARING OFFICER ZWEIGHAFT: Yeah. Of course.

9             MR. FRUMKIN: So the petition to revoke for the  
10    testifican -- testificandum --

11            HEARING OFFICER ZWEIGHAFT: Um-hum.

12            MR. FRUMKIN: -- we have as Ms. Claypool, Culey, (b) (6), (b) (7)(C).  
13    And I was -- I was not sure that we may have gotten our wires  
14    crossed, but with Quigley and (b) (6), (b) (7)(C), they may be in the other  
15    document that I'm not looking at -- the other petition to  
16    revoke. But -- oh, bear with me one second. I'm sorry.

17            HEARING OFFICER ZWEIGHAFT: Well, Quigley is in the  
18    petition to revoke that I have with those other employees.  
19    This petition is dated -- I'm going to flip back at the order  
20    for -- for the date of that.

21            That was August 12th, 2022.

22            MR. FRUMKIN: Thank you.

23            That was August 12th?

24            HEARING OFFICER ZWEIGHAFT: The petition to revoke was  
25    dated --



1 MR. FRUMKIN: Right. So with regards to -- so -- and you  
2 have them for Claypool, Culey, and Quigley?

3 HEARING OFFICER ZWEIGHAFT: And (b) (6), (b) (7)(C).

4 MR. FRUMKIN: And (b) (6), (b) (7)(C). Okay. So the only one missing  
5 there for a petition to appear is (b) (6), (b) (7)(C)?

6 HEARING OFFICER ZWEIGHAFT: Um-hum.

7 MR. FRUMKIN: The Union was unaware that (b) (6), (b) (7)(C) was  
8 served a petition to appear, and I understand that (b) (6), (b) (7)(C) may  
9 have relocated recently. So I'm not sure that they're even  
10 aware that they were -- they were served. I would need to  
11 check with (b) (6), (b) (7)(C).

12 HEARING OFFICER ZWEIGHAFT: Okay.

13 MR. FRUMKIN: And if they were served a courtesy copy via  
14 email, I would point out that that wouldn't be proper service,  
15 given that it would need to be served by personal messenger,  
16 certified mail, or another acceptable form.

17 HEARING OFFICER ZWEIGHAFT: Okay. And then, for the duces  
18 tecum, for the -- with regard to the employees, the petition to  
19 revoke I have covers Claypool and Quigley, I believe.

20 MR. FRUMKIN: Um-hum.

21 HEARING OFFICER ZWEIGHAFT: Who was the other employee  
22 that was served a --

23 MR. FRUMKIN: Calvin Culey.

24 HEARING OFFICER ZWEIGHAFT: Culey, okay.

25 MR. FRUMKIN: And I'm -- I'm happy to represent that, for

1 the subpoena duces tecum, Calvin does not have any responsive  
2 documents. So any enforcement would yield no response. And so  
3 for the other two, I'm happy to argue that. But we -- we were  
4 unaware that Calvin was served until after a due date would  
5 have been responsive. I'm happy to argue why any response on  
6 Calvin's be -- you know, behalf would also be inappropriate.

7 HEARING OFFICER ZWEIGHAFT: Okay. Well -- all right.  
8 Well, if he -- if you're representing to us that he doesn't  
9 have any documents responsive, then I -- I don't know that we  
10 need to argue it, unless the Employer thinks that he would have  
11 something.

12 MR. MENDELSON: And can -- can I just --

13 HEARING OFFICER ZWEIGHAFT: Why don't -- yeah?

14 MR. MENDELSON: Well, I was -- I was just going to say, I  
15 think Mr. Frumkin has acknowledged that no timely petition to  
16 revoke was filed with respect to Calvin. Putting -- putting  
17 aside the question of whether he has any documents, we -- we  
18 wish to examine him. And you know, I would -- even if -- even  
19 assuming, for purposes of argument, that Mr. Frumkin has -- has  
20 confirmed with Calvin that he doesn't have documents, I guess I  
21 would have the latitude in my examination to establish  
22 otherwise.

23 I may need help from Ms. Carter and Ms. Doud. But there  
24 was a separate proceeding where there was testimony about a  
25 website or a message board that was maintained in connection

1 with the organiz -- organizing of this store. And our belief  
2 is there may be -- there may be responsive information there.

3 It's possible that Union counsel think that it's all  
4 Section 7 protected. But whether -- whether there's anything  
5 there about people's arrangements to vote is, I think, a  
6 question that needs to be further explored.

7 HEARING OFFICER ZWEIGHAFT: If this is an employee chat --  
8 is -- is -- then I -- I don't think that that would be  
9 appropriate. I don't think we're going to -- I -- I'm not  
10 going to allow that.

11 Okay. Mr. Frumkin --

12 MR. FRUMKIN: Mr. Mendelson does touch on an import --  
13 well, go ahead, Ms. Hearing Officer.

14 HEARING OFFICER ZWEIGHAFT: I was going to say they're --  
15 they're your petitions to revoke. Do you want to be heard on  
16 them first, and then I'll -- I'll entertain from the Employer?

17 MR. FRUMKIN: Yes. I'd be happy to be heard. Thank you.  
18 And again, excuse me for my costume change very quickly here.  
19 So Mr. Mendelson just mentioned a very important part of our  
20 argument as to why these petitions are inappropriate and  
21 should -- should be revoked -- excuse me -- the subpoenas  
22 should be revoked.

23 One is that the vast amount -- in fact, the vast majority  
24 of the material that the Employer seeks or putatively seeks is  
25 Section 7 protected. These are all communications either

1 between employees about voting, engaging in a NLRB process,  
2 potentially up to and including reaching out to Board mem --  
3 agents, or as he just alluded to, communications between  
4 workers.

5 He may also be interested, as we heard from the testimony  
6 he attempted to introduce from his last witness of -- he may  
7 have an interest in communications between the Union and  
8 employees. That's also protected.

9 This is particularly important for (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C)  
10 (b) (6), (b) (7)(C) and Calvin Culey. None of these employees were named in  
11 the offer of proof, apparently, as having voted inappropriately  
12 in any way, having voted in -- in person. So as far as I can  
13 tell, they are being called only because they were active with  
14 the Union, leaders with the Union.

15 That also raises the question of relevance. What would  
16 they bring to, again, very specifically, the objections that  
17 are before the hearing officer today?

18 In addition to that, we want to talk about other  
19 privilege. We've -- we've talked about attorney-client  
20 privilege, again in testimony with the prior witness. And most  
21 importantly, for this moment, we're talking about the undue  
22 burden that would be presented to the employees who have been  
23 called time and time again.

24 These are all workers who have hourly jobs. They work for  
25 a living. They have had their schedules booked a few weeks

1 out. As the Employer understands the importance of that  
2 predictability for the Employer, they also need to understand  
3 the importance of predictability and income for employees  
4 making, you know, 12 dollars an hour or so.

5 The employees here are not parties to this dispute. This  
6 is between the Union as a Petitioner, but really, it's between  
7 the Employer and the Region who they name in the actual  
8 objections. So to drag in a few workers, to put them on the  
9 stand again, as many of them have testified in prior unfair  
10 labor practice proceedings, is a -- a big deal for them.  
11 It's -- it's a big -- it's a big imposition. It's a big deal.

12 That alone could have a chilling effect on Section 7  
13 activity in the future, if these workers are used as sort of a  
14 example -- you know, didactic example. Others could be  
15 discouraged from participating in the future.

16 On that note, the Employer has made a representation that  
17 the only reason they may be called in twice is because they --  
18 we could not handle this all in one hearing in July. Just as a  
19 point of clarification in that, the -- the Region has already  
20 understood and already ruled that there was no need to  
21 consolidate those. We felt it was improper then. It's  
22 improper now.

23 The reason for that was because the objections before you  
24 today and the unfair labor practices are fundamentally  
25 unrelated. And so what we really do need to focus up on and

1 talk about is the alleged Region 14 misconduct. The employees  
2 will not be able to provide any elucidating evidence about  
3 that. So thank you.

4 MR. MENDELSON: So -- so I'll -- I'll be able to respond  
5 succinctly. First of all, Calvin Culey cast a ballot which  
6 (b) (6), (b) (7)(C) of Region 14 acknowledged to the parties  
7 essentially appeared out of nowhere. (b) (6), (b) (7)(C) told the parties on  
8 the day of the vote count that there was this ballot. I think  
9 (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) found it in reception. (b) (6), (b) (7)(C) had no idea how it was  
10 there. The only one who knows the answer to that question is  
11 Calvin Culey. And I'm not accusing him of wrongdoing. The  
12 question has to do with what the Region did in managing his  
13 ballot, if anything. That relates to objection --

14 HEARING OFFICER ZWEIGHAFT: How that --

15 MR. MENDELSON: Sorry?

16 HEARING OFFICER ZWEIGHAFT: How did he leave that? Did  
17 it -- was that postmarked?

18 MR. MENDELSON: No. No, I don't believe so. I believe --

19 UNIDENTIFIED SPEAKER: It's objection 8.

20 MR. MENDELSON: Yeah, my point is he -- he apparently --

21 HEARING OFFICER ZWEIGHAFT: Objection 8 is that the Region  
22 misplaced it.

23 MR. MENDELSON: Well, that -- that's what the objection  
24 says. But he brought the ballot in, and we don't know who, if  
25 anyone, he spoke to. We just don't know the facts. And the

1 Re -- as I said to you at the outset, if the Region would have  
2 cooperated and provided their information, we probably wouldn't  
3 need to do this. But right now that's -- that's not happening,  
4 apparently. So that's Mr. Culey.

5 (b) (6), (b) (7)(C) --

6 HEARING OFFICER ZWEIGHAFT: So you're -- wait. I'm -- let  
7 me understand. I -- so his -- is your allega -- is your -- did  
8 he drop his ballot off in person?

9 MR. MENDELSON: Well, I don't know that, but that's the  
10 inference -- that he came in, left it with someone, but I don't  
11 know who, and that apparently the ballot disappeared. And then  
12 (b) (6), (b) (7)(C) articulated at the vote count to some or all people  
13 that -- that this -- this ballot had appeared. There -- there  
14 was no postmark on it, and so --

15 HEARING OFFICER ZWEIGHAFT: Ms. Doud or Ms. Carter, was  
16 there a postmark on his ballot?

17 UNIDENTIFIED SPEAKER: There was no postmark.

18 HEARING OFFICER ZWEIGHAFT: I see. Okay.

19 MR. MENDELSON: So that -- that's Mr. -- that's Culey.

20 (b) (6), (b) (7)(C) cast a ballot, and -- I'm sorry. I'm -- I'm looking  
21 at my notes. There was no postmark on it, either. So  
22 that's -- that's why (b) (6), (b) (7)(C) is pertinent to this.

23 (b) (6), (b) (7)(C), at the unfair labor practice case,  
24 testified that this was a mixed voting arrangement. Now, I was  
25 a stranger to this, Madam Hearing Officer, and I asked a

1 relatively innocent question. And next thing I know, (b) (6), (b) (7)(C)  
2 telling me it's not just a mail-ballot election; it's a mail  
3 ballot and in-person election. That was (b) (6), (b) (7)(C) testimony.

4 As Mr. Frumkin acknowledged, the Union objected to the  
5 consolidation of the ULPs with the objections. The Employer  
6 thought they should be heard together. So the reason people  
7 have to make a so-called second appearance is because there was  
8 no consolidation. And when we sought to elicit testimony  
9 there, we were blocked from doing so.

10 The -- the -- the employees here have knowledge that's  
11 pertinent to this. We're not looking to burden anyone. The --  
12 my -- my -- my premise is that their testimony would be very  
13 short. It -- it may even be that we don't need everyone's  
14 testimony. But at this moment, given how things have unfolded,  
15 I can't say that.

16 And so we -- we believe that we're entitled to their  
17 testimony and -- and that you should deny the petition to  
18 revoke as to them. And then as -- as most conveniently it can  
19 be arranged for each of them, we would submit that they should  
20 come to the Zoom hearing and be prepared to answer questions  
21 from us.

22 MR. FRUMKIN: If I can respond in these cases briefly?

23 HEARING OFFICER ZWEIGHAFT: Yeah.

24 MR. FRUMKIN: So as for Calvin Culey's ballot, I think  
25 that there are a couple of interesting parts here. One is that



1 I don't see how the Employer can make any allegation that this  
2 is relevant if Culey's ballot was challenged and therefore not  
3 counted in the actual outcome. It was therefore not  
4 determinative and could not weigh on the outcome of these  
5 objections.

6 More substantively, the Employer has represented that (b) (6), (b) (7)(C)  
7 (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) had no idea how this ballot appeared in the  
8 office. In that case, that seems like a pretty good evidence  
9 that there was no, quote/unquote, Region 14 misconduct, because  
10 there wasn't any communication with (b) (6), (b) (7)(C) -- Calvin Culey as to  
11 how that ballot could have gotten in. So it doesn't speak to  
12 the existing objections before you today.

13 As for (b) (6), (b) (7)(C), if there was no postmark, I -- I would  
14 need to be a bit con -- I would need to doublecheck on this.  
15 But again, I don't see how that's exactly relevant. That  
16 doesn't say that (b) (6), (b) (7)(C) in any way arranged anything or had  
17 any type of vote that was improper or against the stipulated  
18 election agreement.

19 Now, going to (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) --  
20 apparently, they're attempting to use a legal term against (b) (6), (b) (7)(C)  
21 to bring (b) (6), (b) (7)(C) in. The stipulated election agreement makes clear  
22 that this is -- election was to be conducted by mail, where  
23 the -- that document speaks for itself. (b) (6), (b) (7)(C) understanding of  
24 that will add nothing to this proceeding.

25 HEARING OFFICER ZWEIGHAFT: So let me ask the Employer,

1 the -- the Regional Director's report on objections, for  
2 objections 1 through 6, talks about the ballots of Claypool and  
3 Quigley specifically, that the offer -- that was the offer of  
4 proof on those objections, not on the other employees.

5 And there's no reference in objection 8 regarding Culey's  
6 ballot, which the -- the offer of proof says that the Board  
7 agent admitted (b) (6), (b) (7)(C) had lost. There's no -- there was no  
8 allegation as part of that that he voted in person; just that  
9 the Board agent lost his ballot.

10 MR. MENDELSON: So our -- our information is not static.  
11 At the time of the offer of proof on the objections, we -- we  
12 provided what we knew. Now we know more. And in a misconduct  
13 case, I would -- my understanding -- I think I have a citation  
14 if I take a few minutes to find it -- is, in a misconduct case,  
15 the objections are not -- the evidence is not limited by the  
16 scope of the objections.

17 When the -- when the regional -- or when the hearing  
18 officer learns of misconduct, I -- I understand from a  
19 decision, I think from 1958 -- I think it was called Glass  
20 (phonetic throughout) -- that there -- the -- the evidence is  
21 to be liberally received to get to the bottom of misconduct.

22 In the case of Culey and (b) (6), (b) (7)(C), contrary to what Mr.  
23 Frumkin said, the only way we can find out, short of the Region  
24 providing the data that it has, as to what happened via  
25 testimony. It -- it can't be inferred that they had no contact

1 with the Region. In fact, I don't know how they would have  
2 access to the office to drop their ballots since they weren't  
3 postmarked but for having communication with somebody.

4 HEARING OFFICER ZWEIGHAFT: You knew -- you knew at the  
5 count that these weren't postmarked and you didn't list it.  
6 This was not part of your offer in this case. You knew -- you  
7 knew at the -- you know when you filed your objections. And  
8 that's not at all clear from what you filed, either in the  
9 objections or, it seems, the offer of proof.

10 MR. MENDELSON: Well, I -- I'm not sure about that. I  
11 wasn't involved, but you may be correct. But my point is, I --  
12 I can cite you again the Glass case. I'll get you the  
13 citation. The -- the misconduct allegation is not to be  
14 limited by the scope of the written objection. When  
15 evidence -- evidence evolves or unfolds, the hearing officer is  
16 supposed to examine it. And in the case of Culey and (b) (6), (b) (7)(C),  
17 we -- we now know that the ballots were not postmarked -- well,  
18 we knew -- may have -- may have known that then, but we also  
19 have no idea of what happened to those ballots.

20 HEARING OFFICER ZWEIGHAFT: You must have known that. And  
21 I don't understand -- I -- I -- I -- I -- I'm not sure that I  
22 understand what the implication is. You have the -- was  
23 (b) (6), (b) (7)(C) ballot challenged?

24 MR. MENDELSON: I don't know the answer. One of the other  
25 lawyers will have to --

1 MS. DOUD: No, it was not challenged. But both of these  
2 go to objection four about communicating Region 14 personnel  
3 engaged in election misconduct by communicating with the Union  
4 to arrange for special voting procedures for certain  
5 individuals, including allowing people to vote in person rather  
6 than wait for the ballot to be mailed to them.

7 HEARING OFFICER ZWEIGHAFT: I have to --

8 MR. IGLITZIN: (Indiscernible, simultaneous speech) --

9 MS. DOUD: Since nobody knows --

10 MR. IGLITZIN: I'm sorry for interrupting you.

11 HEARING OFFICER ZWEIGHAFT: Go ahead.

12 MS. DOUD: Since nobody knows how either one of those  
13 ballots got there, it goes to that objection and their  
14 testimony is relevant.

15 HEARING OFFICER ZWEIGHAFT: And it was not listed in your  
16 offer of proof, even though you knew about it at the count?

17 MR. IGLITZIN: Madam Hearing Officer, may I just make a  
18 clarifying point?

19 HEARING OFFICER ZWEIGHAFT: Um hum. Let -- let me just  
20 say one other thing. I don't see how -- the objection --  
21 objection four talks about how it's communication with the  
22 Union, not -- not whether -- you know, and it seems to me that  
23 you've put your evidence, or at least some of it, in whether  
24 employees -- this -- objection four goes to communication with  
25 the Union, not -- but (indiscernible, simultaneous speech) --

1 MS. DOUD: That's because it was the Union, that was not  
2 the -- not the individual. Under the stipulated election  
3 agreement, the partners were supposed to reach out. Mr.  
4 Frumkin was the one reaching out on behalf of the partners  
5 initially to make the contact and the special arrangements.

6 Once that arrangement was made behind our backs, then they  
7 called to make the appointment specifically. But those  
8 arrangements were initially made between Gabe Frumkin and  
9 Region 14.

10 MR. FRUMKIN: We've covered that in a good bit of detail.  
11 And I'm not sure what the employees would be able to add to  
12 that. But I do want to go back to the point about (b) (6), (b) (7)(C)  
13 (phonetic throughout). You know, the letter dated May 5th,  
14 2022 from Region 29 does summarize the challenged ballots,  
15 which is where I'm getting a good bit of my information.  
16 Calvin Culey, no postmark. Alydia Claypool, no postmark and no  
17 longer employed. Sage Quigley, no postmark. I'm not actually  
18 sure that (b) (6), (b) (7)(C) ballot didn't have a postmark. And I  
19 don't know how (b) (6), (b) (7)(C) would or would not testify to that.

20 What I do know is that the Employer was paying very good  
21 attention at that time to who had postmarks or no postmarks and  
22 they didn't challenge. So I don't want to assume for the sake  
23 of this conversation and whether or not we need to drag (b) (6), (b) (7)(C)  
24 back in that there was no postmark on their ballot. 1958

25 MR. MENDELSON: It -- it -- you know, Madam Hearing

1     Officer, I do want to say that the -- well, first of all, the  
2     Glass decision which I referenced, I have the cite now, it's  
3     120 NLRB 914 -- 120 NLRB 914 1958. And I'm reading just a  
4     portion toward the end. It says, "In any event" -- and "in any  
5     event" follows a sentence about whether the objections were  
6     going up themselves to encompass the conduct that's being  
7     talked about -- "In any event, where the Regional Director's  
8     investigation, pursuant to timely filed objections, uncovers  
9     matter relating to the conduct of a Board agent or the  
10    functioning of Board processes sufficient to cause the election  
11    to be set aside, the Board will consider such matter, even if  
12    not within the scope of the objection's timely filing". So --

13           HEARING OFFICER ZWEIGHAFT: That's the Regional Director  
14    to send it to hearing.

15           MR. MENDELSON: Well, that's the literal reading of this.  
16    But I -- and it sounds --

17           HEARING OFFICER ZWEIGHAFT: That's the holding of that  
18    case.

19           MR. MENDELSON: Well, I -- I think the logic of that case  
20    is that the Board is supposed to have enough interest in  
21    election misconduct not to be narrow in the scope of the or --  
22    orbit of which it takes evidence. I -- I also want to --

23           HEARING OFFICER ZWEIGHAFT: It seems to be narrow. You've  
24    got -- several of your objections have been sent to hearing.  
25    It seems -- but we're talking about whether -- whether all of

1 these employees are proper witnesses. And it --

2 MR. MENDELSON: And --

3 HEARING OFFICER ZWEIGHAFT: -- it's not clear to me that  
4 they were -- how some of these -- how some of these employees  
5 are going to testify to the things that have been sent to  
6 hearing.

7 MR. MENDELSON: Well, so the question in the case (b) (6), (b) (7)(C)  
8 (b) (6), (b) (7)(C) and Cal Culey is how their ballots, which were not  
9 apparently mailed -- Mr. Frumkin puts the suggestion in that  
10 (b) (6), (b) (7)(C) -- (b) (6), (b) (7)(C) -- (b) (6), (b) (7)(C) ballot was mailed, but we understand  
11 differently -- how they got there. And absent the -- the  
12 Region opening its files and providing that information, the  
13 only potential source is them. And I don't think we can draw  
14 the inference that they somehow magically got into the Board's  
15 offices. They -- they had to have contact with someone, I  
16 imagine, to get their ballots there.

17 You -- you've already indicated, Claypool and Quigley --  
18 well, we don't have to debate about.

19 HEARING OFFICER ZWEIGHAFT: Right.

20 MR. MENDELSON: And in the case of the (b) (6), (b) (7)(C),  
21 I -- I -- Mr. -- Mr. Frumkin portrayed (b) (6), (b) (7)(C) testimony as, you  
22 know, (b) (6), (b) (7)(C) interpreting the stipulation. Well, I -- I heard  
23 that testimony. It was quite to the contrary. (b) (6), (b) (7)(C) testimony  
24 was -- was based upon (b) (6), (b) (7)(C) understanding of what was happening  
25 or what had happened in terms of people not casting ballots by

1 mail, but by casting them when they went to the Board offices.  
2 So --

3 HEARING OFFICER ZWEIGHAFT: Did (b) (6), (b) (7)(C) vote?

4 MR. MENDELSON: I'm sorry? Did (b) (6), (b) (7)(C) vote? Did -- did --

5 HEARING OFFICER ZWEIGHAFT: Yeah.

6 MR. MENDELSON: -- (b) (6), (b) (7)(C) vote? I -- I -- I  
7 don't -- I don't -- I don't know that I know that. I certainly  
8 wouldn't have asked that question. I don't know whether others  
9 who were at the --

10 MS. DOUD: (Indiscernible, simultaneous speech) --

11 MR. MENDELSON: -- count would know.

12 MS. DOUD: Yes.

13 HEARING OFFICER ZWEIGHAFT: Is (b) (6), (b) (7)(C) on the list?

14 MR. MENDELSON: You mean the voter list?

15 HEARING OFFICER ZWEIGHAFT: Yes. Is (b) (6), (b) (7)(C) in the unit?

16 MS. DOUD: Yes. (b) (6), (b) (7)(C) is in the unit.

17 MR. FRUMKIN: And I actually would represent to the  
18 contrary, (b) (6), (b) (7)(C) vote was not counted. But I want to double-check  
19 that.

20 MR. MENDELSON: And -- and -- and lastly, I did want to  
21 say to you that the Union's assertion is that because the  
22 challenged ballots were cleared, they're somehow -- they --  
23 they evaporate - vaporized into the ether and they're not  
24 pertinent. This is a case about election misconduct -- Board  
25 election misconduct. I don't think the -- what happened with



1 challenged ballots has any bearing. I -- I -- I told you that  
2 I wasn't interrogating Mr. Frumkin as a fact witness about  
3 that, but I did have a note that we might want to challenge  
4 document as part of the formal record, but not because I think  
5 it's central here, but because the Union has raised that point.  
6 I think that point is not pertinent, but I think in order to  
7 address that, we have to have the document as part of the  
8 record.

9 HEARING OFFICER ZWEIGHAFT: Okay.

10 MS. DOUD: To address the issue of (b) (6), (b) (7)(C) ballot,  
11 (b) (6), (b) (7)(C) on the list and it was counted.

12 HEARING OFFICER ZWEIGHAFT: Okay. I don't -- I do not see  
13 how like (b) (6), (b) (7)(C) personal opinion or anything that (b) (6), (b) (7)(C) might have  
14 heard would be probative. It would be, at best, hearsay, as  
15 far as I can tell, from what you're representing in terms of an  
16 offer of proof.

17 With regard to Claypool and Quigley, their ballots --  
18 the -- the offer of proof on -- on objection with number 1  
19 through 6 go to their, it seems to me, go to their ballots and  
20 how they voted. I don't know that Mr. Culey can testify to  
21 what happened to his ballot once it got to the office. If he,  
22 in fact, voted in person, I would -- I will say I'm going to  
23 take that under advisement and might allow some very limited  
24 testimony regarding how he voted, but that would be -- that  
25 would be it.

1 MR. FRUMKIN: May I make a representation about that?

2 HEARING OFFICER ZWEIGHAFT: Yeah.

3 MR. FRUMKIN: I can represent that in a conversation I had  
4 with Calvin, Calvin informed me that he -- that they slid the  
5 ballot under the door.

6 HEARING OFFICER ZWEIGHAFT: Okay.

7 Okay. Well, I think that would be relevant to possibly  
8 a -- possibly objections 1 through 6 plus objection 8, which  
9 deals with the chain of custody regarding his ballot.

10 MR. FRUMKIN: Calvin won't be able to speak about the  
11 chain of custody respectfully.

12 HEARING OFFICER ZWEIGHAFT: But if he slid it under a door  
13 and he doesn't -- then I -- I --

14 MR. FRUMKIN: And either way, Calvin's ballot wasn't  
15 counted at the end of the day. So there's still a relevance --  
16 a central relevance issue there.

17 MR. MENDELSON: Well, again, we disagree that it has  
18 any -- that relevance issue is even pertinent to the way you're  
19 describing it. We don't think that the fact that a ballot was  
20 counted or challenged or anything of the sort has anything to  
21 do with whether or not there was Board misconduct that  
22 warrants -- again, we are -- our position is not the rerunning  
23 of the election but the dismissal of the petition, given the  
24 gravity of what we maintain happened.

25 HEARING OFFICER ZWEIGHAFT: Yeah.

1           At this point, I don't see -- I don't see immediate  
2   relevance at this point of (b) (6), (b) (7)(C) -- of having testimony from  
3   (b) (6), (b) (7)(C) or from (b) (6), (b) (7)(C), if that -- if as the hearing  
4   goes on somebody can articulate a need for that later on in  
5   light of something else, then I will consider that. But at  
6   this point with regard to Claypool, Quigley, and Culey, I think  
7   their testimony may be relevant and may be helpful in terms of,  
8   you know, developing a full record.

9           With regard to the documents, I haven't seen -- obviously  
10   for Culey I haven't seen a petition to revoke. I have looked  
11   at the -- at the petition for Claypool and Quigley. I -- I  
12   will say, I think that this is very broad and probab --  
13   probably overly broad. If there is something that is relevant  
14   with regard to how they came in, if they have communications  
15   specifically about that, that would be relevant. But the -- I  
16   think that this is a very, very broad duces tecum.

17           So I don't -- if the part -- if the Employer wants to  
18   consider paring it down somehow, I would hear that. But the  
19   way it's drafted is ver -- is too broad.

20           MR. MENDELSON: Why don't you let Ms. Doud and Ms. Carter,  
21   and me talk for five minutes and then we can come back on and  
22   tell you our intentions?

23           HEARING OFFICER ZWEIGHAFT: Okay.

24           Let me also -- as long as we're dealing with petitions to  
25   revoke, do you want to discuss the Region's petition right now

1 or do you want to discuss that at a later time?

2 Ms. Schneider, it's up -- I think it's -- that's probably  
3 your call.

4 MR. SCHNEIDER: I'm happy to discuss now or later. Now,  
5 is fine if -- if you would like to before --

6 MR. IGLITZIN: Your Honor --

7 HEARING OFFICER ZWEIGHAFT: Yeah.

8 MR. IGLITZIN: I'm -- I'm sorry.

9 HEARING OFFICER ZWEIGHAFT: Mr. Iglitzin, go ahead.

10 MR. IGLITZIN: I have a strong preference that we try to  
11 resolve that issue now because I have all kinds of scheduling  
12 challenges, and we may be seeking an emergency request for  
13 review on the issue of these three worker witnesses. And I  
14 just --

15 HEARING OFFICER ZWEIGHAFT: Okay.

16 MR. IGLITZIN: -- want sure -- and it may be that -- that  
17 Starbucks is going to seek some additional relief based on your  
18 ruling on -- on their request for, you know, witnesses and  
19 testimony from Region 14. So I'd kind of like to see how we  
20 can clarify that.

21 HEARING OFFICER ZWEIGHAFT: Okay.

22 Ms. Schneider, why don't we do that? Go ahead.

23 MR. SCHNEIDER: Sure. The Region's position remains the  
24 same that we don't diverge from the General Counsel's position  
25 that production of the documents and testimony is not

1 appropriate where these are materials in our investigative  
2 files relating to an open case. The -- and I -- I just would  
3 like to point your attention to the Region's petition to revoke  
4 where we cite the Division of Judges Bench Book, Section 8-840,  
5 which states that "The failure of the parties serving the  
6 subpoena to obtain written consent under 102.118 is grounds for  
7 revoking or quashing the subpoena".

8 I understand the -- the cases that Mr. Mendelson  
9 introduced earlier, but that does not change the Region's  
10 position.

11 HEARING OFFICER ZWEIGHAFT: Okay. Thank you.

12 I also understand the Employer's position in the cases  
13 that it cited. And I've looked at those. At this point, I  
14 mean, there is language in those cases about -- well, while  
15 you're correct that there was language about the hearing  
16 officer not just summarily relying on the rules and regs, it  
17 also talks about whether there was prejudice to the Employer  
18 and whether the Employer could make a renewed request in light  
19 of how the evidence comes in.

20 And I think that at this point, I would say that it's not  
21 clear whether there would be prejudice and whether as the  
22 evidence comes in throughout the hearing, we've had -- we've  
23 had -- we've been on the record now for a long time and had  
24 very little evidence come in. I think we need to see how the  
25 record develops. And that I think at that point I could give

1     you leave can either make a new -- to renew your request or  
2     make a new, perhaps more specific, request that specifies the  
3     need for either the Board agent testimony or the documents  
4     given how the rest of the record comes in. I believe that  
5     that's what these cases contemplate. And I'm not prepared to  
6     overrule the General Counsel without -- without a more  
7     developed record.

8             MR. MENDELSON: So -- so I can represent to you that  
9     putting -- putting to the side the employees at this point  
10    you're giving us some latitude to question three of them --

11            HEARING OFFICER ZWEIGHAFT: Yes.

12            MR. MENDELSON: -- and -- and putting to the side any  
13    other witness the Employer has who is neither the Union nor the  
14    Region, and then further putting to the side the whistleblower  
15    who we do not yet have permission to question because the  
16    Region said we give you leave to renew as the evidence unfolds,  
17    exactly what you just said --

18            HEARING OFFICER ZWEIGHAFT: (Indiscernible) not even --

19            MR. MENDELSON: Sorry?

20            HEARING OFFICER ZWEIGHAFT: I -- I had not seen that.

21            MR. MENDELSON: Oh, I guess it wasn't called to your  
22    attention. The reg -- the Regional Director issued a decision  
23    denying us the right to question that person, but stated that  
24    we have a right to renew that application depending on how the  
25    record evolved. Here's -- here's the problem, Mr. -- Mr.

1 Frumkin testified he had some knowledge because he interacted  
2 with Region 14 in instances where neither Ms. Doud nor Ms.  
3 Carter interacted.

4 And I think in the colloquy that accompanied some of the  
5 resolution of objections that Mr. Iglitzin raised, you yourself  
6 acknowledge that -- that the, you can put it this way, but the  
7 essence of this case really, in part at least, has to do with  
8 what happened that the Employer was not party to. And so the  
9 only ones who know that are the Region and -- and the Union.  
10 And we've now elicited testimony from Mr. Frumkin as to what he  
11 knows. There were certain instances where he knew things.  
12 There were certain instances where he said he didn't, either  
13 because he wasn't part of it or because he doesn't have a clear  
14 recollection.

15 So I think it's clear that the record, as it shakes out,  
16 is going to be exactly with respect to the issue that is before  
17 you what it is today. No one else is going to be able to  
18 provide enlightenment or sunshine, to use Ms. Doud's language,  
19 as to what happened, I'll use the words behind the scenes or  
20 behind the Employer's back, and so the question --

21 HEARING OFFICER ZWEIGHAFT: You have two witnesses who are  
22 going to testify, or maybe three witnesses, who are going to  
23 testify about how they came in. So let's -- I -- I -- I don't  
24 agree with that characterization.

25 MR. MENDELSON: Okay. Well -- and -- and I'll just --

1 I'll just finish it up by saying, as we've said now repeatedly,  
2 that the -- the Region and the Board have in their files  
3 exactly what happened. And so it's -- it is -- I -- I haven't  
4 been political, to use Mr. Iglitzin's term, but I will now,  
5 it's -- it's thoroughly befuddling to us that when the evidence  
6 is right there in the Region's files, we're not permitted  
7 access to it, especially when the spokesperson for the Board  
8 made the statement that normal processes will follow and  
9 that's -- that's how -- how this -- this will be resolved.

10 So we don't -- we don't understand how we're supposed to  
11 put on a complete record without having access to the very  
12 evidence that will ultimately dispose of the question. But I  
13 understand your point. I guess I'll speak with my colleagues  
14 and we'll talk about what we intend to do next.

15 HEARING OFFICER ZWEIGHAFT: Okay. All right. So we're  
16 taking -- so we're taking a few minutes now. And then how long  
17 do you need to talk?

18 MR. MENDELSON: I -- I guess -- it's 6:04. If we come  
19 back at 6:10 or minute or two after that, we should be fine.

20 HEARING OFFICER ZWEIGHAFT: Okay. Why don't we -- why  
21 don't we take ten minutes and give everybody a chance to  
22 stretch legs and -- and come back at 6:15. How -- do you  
23 anticipate starting another witness --

24 MR. MENDELSON: Well, that's --

25 HEARING OFFICER ZWEIGHAFT: -- today?



1 MR. MENDELSON: -- that's what we -- that's what we're  
2 going to see about right now.

3 HEARING OFFICER ZWEIGHAFT: Okay. All right.  
4 Off the record.

5 (Off the record at 6:05 p.m.)

6 MR. MENDELSON: Employer would like next to call the three  
7 employees that you indicated we can question, Quigley, Claypool  
8 and Culey.

9 HEARING OFFICER ZWEIGHAFT: Okay.

10 MR. MENDELSON: I'm told that one -- one of my colleagues  
11 had attempted to be in touch with them and my understanding is  
12 that it's been confirmed for us that we have provided Zoom  
13 instructions for the first day of hearing and none of those  
14 three appeared. And so we're concerned about getting them  
15 here. I don't know whether the Union can intervene and assist  
16 in doing that.

17 HEARING OFFICER ZWEIGHAFT: Okay.

18 MR. IGLITZIN: I could be heard on that, if you like.

19 HEARING OFFICER ZWEIGHAFT: Yes. Go ahead.

20 MR. IGLITZIN: So at this moment, the Union is considering  
21 whether it wants to do an emergency request for review to the  
22 Board of respectfully the hearing officer's ruling --

23 HEARING OFFICER ZWEIGHAFT: Um-hum.

24 MR. IGLITZIN: -- on these three employees, which would  
25 then necessarily involve us making a request that we adjourn

1 the hearing until that -- the Board has had a chance to  
2 consider the request for review or potentially for a shorter  
3 period of time, if the hearing officer is worried that there  
4 won't be a -- a quick decision. But we have not made that  
5 decision. Obviously, this is a -- a work in progress. I would  
6 not normally be in a position of trying to assist an Employer  
7 in arranging to get witnesses who have been -- allegedly been  
8 subpoenaed brought in. I would suggest that -- but again, I'm  
9 not saying we wouldn't do that, but literally prior to that  
10 statement had not -- not crossed my mind that it might be my  
11 problem, not just Jedd's.

12 HEARING OFFICER ZWEIGHAFT: Yeah, well --

13 MR. IGLITZIN: And --

14 HEARING OFFICER ZWEIGHAFT: -- it's not your problem, but  
15 we're just making a --

16 MR. IGLITZIN: Yeah.

17 HEARING OFFICER ZWEIGHAFT: -- (indiscernible,  
18 simultaneous speech) asking.

19 MR. IGLITZIN: Understood. I would, at a minimum, ask if  
20 we're going to proceed in this fashion --

21 HEARING OFFICER ZWEIGHAFT: Um-hum.

22 MR. IGLITZIN: -- subject to the possibility that we would  
23 make this other request that we kick this hearing over until  
24 next Tuesday. There are -- my understanding is and potentially  
25 two of these three workers --

1           And Mr. Mendelson, please correct me if your information  
2   is -- is different and more accurate than mine.

3           My understanding maybe that two of the three witnesses do  
4   not currently work for Starbucks and thus likely have other job  
5   responsibilities that they are going to want to give proper  
6   notice to their Employers.

7           I'm thinking if we go back on the record Tuesday morning,  
8   we can see -- and we -- putting aside the request for review,  
9   I'll certainly do my best, and Mr. Frumkin will, to find out  
10   the status of these people and what their availability is. And  
11   we can have an off-the-record conversations with Starbucks'  
12   counsel on that as well. But I -- I don't -- I have personal  
13   (audio interference). I'm in transit and then I'm out of the  
14   country through next Monday. So I have my own, I will -- I  
15   will reveal my own agenda for not wanting to recommence until  
16   next Tuesday. But given this -- this ruling, I -- I don't  
17   think it's going to be unreasonable to tell any employee, you  
18   know, we need you to come in, but it's -- we're not going to  
19   tell you that at 6:18 p.m. or 5:18 p.m. Kansas time that you  
20   have to come in tomorrow morning.

21           MR. MENDELSON: So -- so just for -- then I can be  
22   corrected by anybody here, my understanding is that Quigley and  
23   Claypool remain employed by the Company, but that Culey does  
24   not.

25           With respect to Mr. Iglitzin's proposal, I hate -- I hate

1 to slow us down here, but I think I need to go speak with my  
2 co-counsel again. Certainly as -- as a matter of principle, I  
3 like to convenience other people when they have scheduling  
4 problems. So if -- if -- if there's nothing else we're going  
5 to discuss other than that at the moment, I guess we should  
6 just take a very brief break again, three of us can talk.

7 MR. IGLITZIN: Great. Thank you. And that's actually  
8 useful --

9 HEARING OFFICER ZWEIGHAFT: Okay.

10 MR. IGLITZIN: -- because we may be able to make a  
11 decision on what I was talking about in our possible request  
12 for review.

13 MR. MENDELSON: Well -- well, although --

14 HEARING OFFICER ZWEIGHAFT: (Indiscernible, simultaneous  
15 speech) -- just wait a minute. Just wait a minute. Excuse me.  
16 Just wait a minute.

17 First of all, the employees were on notice that they were  
18 subpoenaed for yesterday. So I think it's not unreasonable to  
19 expect them to be available. I don't think it's -- I -- I'm  
20 not suggesting that we're going to call them tonight. It  
21 sounds like we are not, and that's fine. We can make a road  
22 plan for the rest of the -- for the rest -- for the rest of the  
23 time.

24 Mr. Iglitzin, I think if you were going to be unavailable  
25 for several days, it would have been prudent to let me know

1     that and let the other parties know that and not tell us, you  
2     know, Wednesday night at 6:20 New York time that you were not  
3     going to be available for several days during this hearing when  
4     the notice of hearing, which has been out for quite some time,  
5     said "consecutive days". And that's been my expectation. And  
6     that's how I've arranged my schedule for the next several days  
7     for this hearing. And I assume that the other parties have as  
8     well.

9           MR. IGLITZIN: I apologize for that, Madam Hearing  
10    Officer. I -- I -- I did not do that. And -- and I had some  
11    different ideas about how the hearing might develop, and I -- I  
12    have nothing to say other than I apologize for that.

13           HEARING OFFICER ZWEIGHAFT: Is Mr. Frumkin not able to  
14    take over the hearing tomorrow?

15           MR. IGLITZIN: He is -- he is not. As you (indiscernible,  
16    simultaneous speech) --

17           HEARING OFFICER ZWEIGHAFT: When is Mr. Frumkin available?

18           MR. IGLITZIN: I'm sorry, so if we need to, I could  
19    probably arrange to be available on Friday. Just not tomorrow.  
20    Tomorrow is a travel day and I -- I literally will not have  
21    cell service. So if I could be afforded that grace period, I  
22    think it would be a courtesy to the employee witness. As I  
23    understand, they might have received subpoenas, that they are  
24    laypeople and I -- I don't think that's an unreasonable route  
25    of notice to -- to give workers.

1 HEARING OFFICER ZWEIGHAFT: Does their Employer object to  
2 taking tomorrow off and recommencing on Friday?

3 MR. MENDELSON: So I -- I do have to speak with Ms. Doud  
4 and Ms. Carter. We -- we can talk for --

5 HEARING OFFICER ZWEIGHAFT: Okay.

6 MR. MENDELSON: -- two or three minutes and come right  
7 back on.

8 HEARING OFFICER ZWEIGHAFT: Okay. Well, let's wait a few  
9 minutes before we do that. With regard to whether if the Union  
10 does want to file a request for review on my ruling, Mr.  
11 Mendelson, I would expect that you have other witnesses that  
12 you could continue with. I do like to give the objecting party  
13 latitude to present their case the way they want to. But I  
14 think that you probably also have other witnesses, so I don't  
15 want to hold it up for that.

16 MR. MENDELSON: So -- so one of the witnesses, of course,  
17 is the whistleblower. And as of this point in time, I think  
18 it's unrealistic for us to expect that the Region or the GC are  
19 changing their view, although we certainly hope they are.

20 Yesterday -- or was it this morning, Kim? I'm confused.  
21 Day blends into night here.

22 MS. CARTER: This morning.

23 MR. MENDELSON: This -- this morning we sent the General  
24 Counsel another letter predicated on what we had told you  
25 yesterday, that the August 9th denial preceded the emergence of

1 the whistleblower. So we still have some optimism that the  
2 General Counsel will change and the Regional Director will  
3 change their view. But at the moment, that --

4 HEARING OFFICER ZWEIGHAFT: Who do you have who's  
5 testifying about things that happened at the count?

6 MR. MENDELSON: I'm sorry?

7 HEARING OFFICER ZWEIGHAFT: Who's testifying about things  
8 that happened at the count?

9 MR. MENDELSON: Ms. Doud.

10 HEARING OFFICER ZWEIGHAFT: Okay.

11 MR. MENDELSON: And -- and --

12 HEARING OFFICER ZWEIGHAFT: When are you calling her?

13 MR. MENDELSON: Well, we -- we thought -- we thought that  
14 she should be the penultimate litmus, I think, and I'm just  
15 using a term. But -- but our -- our sequencing would have  
16 intended for these three employees to be next. So whether --  
17 whether -- we'll -- we'll come back to you after we have this  
18 break and let you know whether we -- we're open to proceeding  
19 in a different order.

20 HEARING OFFICER ZWEIGHAFT: Well, you may be open to  
21 proceeding in a different order if we're going to go forward.  
22 I'm not holding everything up. Okay?

23 MR. MENDELSON: Yeah.

24 HEARING OFFICER ZWEIGHAFT: All right.

25 I think -- it sounds like we have some scheduling

1 discussions to have. I'm not sure that they all have to be on  
2 the record at this point or if there's something that needs to  
3 be on the record, we could go on very briefly.

4 But Mr. Mendelson, I'll give you five minutes.

5 And then I want to come back together and we'll have a  
6 discussion about how we're proceeding on this case. If we need  
7 to go on the record just for a moment to memorialize it, we'll  
8 do that. But the -- we're going to have some discussion off  
9 the record about how we're going -- how we're going to proceed.  
10 I don't want to burden the record with a whole bunch of  
11 scheduling discussion, all right?

12 MR. MENDELSON: Sounds good.

13 HEARING OFFICER ZWEIGHAFT: Off the record.

14 (Off the record at 6:24 p.m.)

15 HEARING OFFICER ZWEIGHAFT: All right. So we've had some  
16 off-the-record discussion. Mr. Iglitzin is not available  
17 tomorrow and Mr. Frumkin is not available tomorrow. Again, I  
18 will note that this is the first I'm hearing of this. I think  
19 that this is very unfair to the other parties who have cleared  
20 their schedules for this hearing to not tell us before the end  
21 of the day during a hearing that has been scheduled for a long  
22 time and where it was very clear there was going to be  
23 consecutive days. I don't think there was any reasonable  
24 expectation that this case was going to go for two days, and we  
25 had a whole day in which we spent on document production.



1 So -- and this is the first time this is being raised. I -- I  
2 really am disappointed that this is the first time that I'm  
3 hearing about that. And I would expect that from now on the  
4 em -- the attorneys will make themselves available for this  
5 hearing.

6 We will recommence on Friday morning at 11 a.m. Mr.  
7 Iglitzin has indicated to me that he is going to file a request  
8 for a review on my ruling that Alydia Claypool, Calvin Culey,  
9 and Sage Quigley can testify. So I will give him leave to do  
10 that. Mr. Mendelson has indicated that he will have another  
11 witness available Friday morning so that we can commence and  
12 move forward with this case.

13 Is there anything at this point that anybody wants to add  
14 before we go off the record until Friday?

15 MR. MENDELSON: Can you just restate your -- your ruling  
16 on the --

17 HEARING OFFICER ZWEIGHAFT: Oh, yes.

18 MR. MENDELSON: -- Region --

19 HEARING OFFICER ZWEIGHAFT: So yes.

20 MR. MENDELSON: 14 (indiscernible, simultaneous speech)?

21 HEARING OFFICER ZWEIGHAFT: Yes. Yes.

22 The Employer had asked me while we were off the record  
23 that I clarify what my specific ruling on the Region's petition  
24 to revoke is. And at this point I am reserving ruling because  
25 I do not think that I can overrule the General Counsel. But

1     because I have given the Employer leave to renew its request,  
2     I'm not going to grant the petition if the -- if the General  
3     Counsel or the Regional Director takes a different view later,  
4     given the way the evidence comes in, and especially in light of  
5     the Regional Director's ruling that the Employer could renew  
6     its request. I'm just reserving that ruling for the time  
7     being.

8             MR. MENDELSON: Thank you.

9             HEARING OFFICER ZWEIGHAFT: Was -- was that clear?

10            MR. MENDELSON: Yes. Thank you.

11            HEARING OFFICER ZWEIGHAFT: Okay.

12            Anything else before we adjourn for the day?

13            MR. MENDELSON: Not -- not for the company.

14            MR. IGLITZIN: I don't -- I don't -- thank you, hearing  
15     officer. I believe don't you said on the record, but it's been  
16     a long day, that the employee witnesses will not need to appear  
17     to testify until the Board has had a chance to adjudicate the  
18     pending request for review?

19            HEARING OFFICER ZWEIGHAFT: That's correct.

20            MR. IGLITZIN: Thank you. And I did want to thank you,  
21     again, for accommodating my personal schedule.

22            I appreciate that it inconvenienced you and -- and the  
23     other party representatives. And I apologize to them as well.

24            HEARING OFFICER ZWEIGHAFT: Okay. Thank you. I  
25     appreciate that.

1 All right. We are adjourned. Off the record.

2 **(Whereupon, the hearing in the above-entitled matter was**  
3 **recessed at 6:38 p.m. until Friday, August 19, 2022 at 11:00**  
4 **a.m.)**

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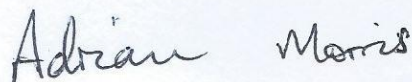
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C E R T I F I C A T I O N

This is to certify that the attached proceedings, via Zoom videoconference, before the National Labor Relations Board (NLRB), Region 29, Case Number Case Number 14-RC-289926, Starbucks Corporation and Chicago & Midwest Regional Joint Board Workers United/SEIU, held at the National Labor Relations Board, Region 29, Two MetroTech Center, Brooklyn, New York 11201, on August 17, 2022, at 1:06 p.m., was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.



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ADRIAN MORRIS

Official Reporter

OFFICIAL REPORT OF PROCEEDINGS  
BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 29

In the Matter of:

Starbucks Corporation, Case No. 14-RC-289926

Employer,

and

Chicago & Midwest Regional  
Joint Board Workers  
United/SEIU,

Petitioner.

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Place: Brooklyn, New York (Via Zoom Videoconference)

Dates: August 19, 2022

Pages: 195 through 314

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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 29

In the Matter of:

Starbucks Corporation,

Employer,

and

Chicago & Midwest Regional  
Joint Board Workers  
United/SEIU,

Petitioner.

Case No. 14-RC-289926

The above-entitled matter came on for hearing, via Zoom videoconference, pursuant to notice, before **RACHEL ZWEIGHAFT**, Hearing Officer, at the National Labor Relations Board, Region 29, Two Metro Tech Center North 5th Floor, Brooklyn, New York 11201, on **Friday, August 19, 2022, 11:00 a.m.**



1                                    A P P E A R A N C E S

2        **On behalf of the Employer:**

3                **JEDD MENDELSON, ESQ.**  
4                **KIMBERLY J. DOUD, ESQ.**  
5                **ELIZABETH B. CARTER, ESQ.**  
6                LITTLER MENDELSON, P.C.  
                 111 N. Orange Avenue  
                 Suite 1750  
                 Orlando, FL 32801

7        **On behalf of the Petitioner:**

8                **DIMITRI IGLITZIN, ESQ.**  
9                **GABE FRUMKIN, ESQ.**  
                 BARNARD, IGLITZIN & LAVITT, LLP  
10               18 W. Mercer Street  
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11               **ROBERT S. CERVONE, ESQ.**  
12               DOWD, BLOCH, BENNETT, CERVONE, AUERBACH & YOKICH, LLP  
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                 Chicago, IL 60603

14        **On behalf of the General Counsel:**

15               **ABBY SCHNEIDER, ESQ.**  
16               THE NATIONAL LABOR RELATIONS BOARD, REGION 14  
17               224 South Boulder Avenue, Room 322  
                 Tulsa, Okay 74103  
                 Tel. (918)581-7951  
18               Fax. (918)581-7970

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Kimberly Doug	223	291, 292			



E X H I B I T S

<u>EXHIBIT</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
<b>Employer:</b>		
E-40	229	230
E-41	234	236
E-42	235	236
E-43	243	244
E-44	244	245
E-45	245	245
E-46	252	253
E-47	253	254
E-48	254	255
E-49	255	256
E-50	271	281
E-51	278	281
E-52	226	229
E-54	231	233
E-55	231	233
E-70	236	236
E-77	227	229
E-78	284	289
E-79	268	270
E-80	218	221

1     **Petitioner:**

2           P-9

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1                                    P R O C E E D I N G S

2                    HEARING OFFICER ZWEIGHAFT:    Okay.    We are resuming the  
3                    case of Starbucks Corporation, case number 14-RC-289926.    We  
4                    left off Wednesday with a couple of housekeeping matters that  
5                    we need to revisit this morning.    I think there is an issue of  
6                    some exhibits that needed to be redacted.    I haven't seen  
7                    anything on that since we were on the record on Wednesday.    So  
8                    I don't know if somebody wants to update me where we are with  
9                    that.

10                  MR. MENDELSON:    I think -- I think Ms. Carter can handle  
11                  that and some other exhibit related matters.

12                  HEARING OFFICER ZWEIGHAFT:    Okay.    Ms. Carter, do you want  
13                  to just let me know where we are with that?

14                  MS. CARTER:    Yes, so I am sending over a corrected  
15                  Employer Exhibits 1 through 34 and 40 through 50, which  
16                  includes some reductions we had discussed, from the voter list  
17                  documents.    And I'm also sending over Exhibits -- Employer  
18                  Exhibits 63, 64, 65, and 66, which were the redacted ones that  
19                  were introduced yesterday.    And then I'm going to send over  
20                  what's been marked as Employer Exhibits 67 through 76, which  
21                  are the rest of the subpoenaed emails which have also been  
22                  redacted.

23                  I did come up with a key, which I can circulate just  
24                  assigning each of the seven employees a number so that you will  
25                  be able -- the brief writer will be able to tell -- keep track

1 of which employees are which without putting the names into the  
2 documents in the record.

3 HEARING OFFICER ZWEIGHAFT: Okay. All right. So I will  
4 have to look at that. I, you know, I want to make sure that  
5 it's clear not only to me, but to, you know, subsequent readers  
6 of the record. So I will take a look at that and then, you  
7 know, I can revisit. So I will revisit the ruling on 63  
8 through 66 after I've had a chance to review that. Okay?

9 All right. Anything else on those exhibits? Okay.

10 MR. FRUMKIN: Something occurred to me. I don't know  
11 precisely how we can do this. But, Calvin Culey is not listed  
12 in the exhibits. Literally, I think in 63 and 64.

13 HEARING OFFICER ZWEIGHAFT: Uh-huh.

14 MR. FRUMKIN: And I want to -- let me just double-check  
15 that my -- my notes are correct there. Yes, 64 and 66, excuse  
16 me. So I thought it would -- it may be helpful to anyone  
17 reviewing the record on the Board to have a stipulation that --  
18 those exhibits don't reflect that the Union requested a ballot  
19 on Calvin's behalf.

20 MR. MENDELSON: I'm -- I'm sitting here pondering this.  
21 I -- I don't -- I -- my colleagues can weigh in if they have  
22 knowledge I don't. I don't know if I am recalling there was  
23 testimony about that. And I don't purport to know the facts  
24 surrounding that. Is that -- is that what Mr. Frumkin is  
25 suggesting; that either he or someone else on behalf of the

1 Union contacted the Region to ask for a ballot for Mr. Culey?

2 HEARING OFFICER ZWEIGHAFT: I think he's saying that they  
3 did not and that he just thought to be clear.

4 MR. FRUMKIN: Yeah, because if its redacted it will be  
5 hard to tell going -- going down the road.

6 MS. DOUD: Well, we don't know what happened outside of  
7 the emails that we have. But there are other emails and phone  
8 calls that happened.

9 MR. FRUMKIN: Correct. That's why I -- I -- I understand  
10 your assertion there. That's why I am saying that Exhibit 64  
11 and 66, we could agree specifically, those are the ones that  
12 are redacted. And I -- I would want the record to reflect that  
13 the redaction -- the redacted parts don't include Calvin  
14 Culey's name.

15 MR. MENDELSON: I guess -- I guess my understanding of the  
16 system that Ms. Carter devised is that the reductions will, by  
17 virtue of the key, reveal the name of the person who is the  
18 subject of the redaction. So I'm not sure why we would need  
19 the stipulation. The other -- the other point I was going to  
20 make, is that's -- this is one additional reason to bring Mr.  
21 Culey in as a witness so that we can clarify how it is that he  
22 came to have a ballot if you didn't receive one initially by  
23 mail.

24 HEARING OFFICER ZWEIGHAFT: Okay. I -- I don't want to  
25 get too bogged down in this right now. I haven't seen the key.

1 I'm -- so I'm -- it's a little hard for me to, you know,  
2 comment on it.

3 I mean, I do have a -- I -- I was going to actually raise  
4 with regard to Exhibit 63, 63 only makes reference to one of  
5 the two voters -- or one of the voters who's already identified  
6 in the report on objections. And it doesn't include any other,  
7 you know, identifying information. It doesn't include an  
8 address or any contact information.

9 I was wondering if, you know, that even needs to be  
10 redacted. There was -- there was no issue about -- I mean,  
11 it -- it's part of the record that that person's name is  
12 already part of the record. I don't feel strongly if the  
13 parties feel like that should be redacted, that's fine. I'm  
14 just raising it as an issue whether, you know, it just occurred  
15 to me. I don't know if that's necessary, but I'm not opposed  
16 to it.

17 So why don't we let -- after Ms. Carter has re -- has  
18 circulated this, we can -- we can revisit.

19 I have not seen any appeal regarding the testimony of the  
20 employee witnesses.

21 MR. IGLITZIN: Yeah, I believe that appeal is being  
22 electronically filed as we speak. We found out yesterday --

23 HEARING OFFICER ZWEIGHAFT: Why hasn't it been filed --  
24 you've -- you've -- we've had a lot of time for this to have  
25 already been filed.

1 MR. IGLITZIN: Well, we finished the -- the hearing well  
2 after hours last night. And it was just a production  
3 challenge, a lot of -- a lot of papers being drafted and edited  
4 and --

5 HEARING OFFICER ZWEIGHAFT: We finished at 3:00 your time  
6 on Wednesday.

7 MR. IGLITZIN: I will defer to your recollection of it.  
8 In any event, this is how long it has taken us to -- to perfect  
9 that. You will see it very shortly.

10 HEARING OFFICER ZWEIGHAFT: Okay.

11 MS. CARTER: I'm sorry. Is there a new court reporter  
12 email address I should be sending exhibits do for today?

13 HEARING OFFICER ZWEIGHAFT: Yeah, let me give you his  
14 email.

15 UNIDENTIFIED SPEAKER: Do you want me to just drop it into  
16 chat? I could do that.

17 HEARING OFFICER ZWEIGHAFT: Okay. It's Moxie, M-O-X-I-E,  
18 838@gmail.com.

19 MS. CARTER: Thank you.

20 HEARING OFFICER ZWEIGHAFT: Okay. Okay. Is there  
21 anything else pending before we start with testimony?

22 MR. MENDELSON: I -- I just want to check with Ms. Carter.  
23 Did that cover all the exhibits, Ms. Carter?

24 MS. CARTER: I just sent the exhibits. It covered 1  
25 through 34, for the Employer's Exhibit 1 through 34, 40 through

1 51, and 61 through 77. Because of the size I was unable to  
2 send it via Outlook and I have had to send it via VisCom for  
3 those. I will send the key separately so it's not going to the  
4 court reporter as well, the list of employee names. So you can  
5 review to see if the redactions in 63 through 76 make sense to  
6 all the parties. And then I will send via Outlook, a couple of  
7 other exhibits that we have just so you can access them  
8 quicker. Some of the smaller exhibits.

9 MR. IGLITZIN: Madam Hearing Officer, I'm sorry. Are we  
10 on the record or are we still off?

11 HEARING OFFICER ZWEIGHAFT: Yeah. No, we've been on the  
12 record.

13 MR. IGLITZIN: Okay. The Union does renew its objection  
14 to Ms. Doud being called as a witness. We have submitted  
15 written explanation in more detail to that objection. We  
16 e-filed it and emailed it. I don't know if you've had a chance  
17 to look at it.

18 HEARING OFFICER ZWEIGHAFT: If you want to be heard I will  
19 listen. And I don't know if you want to make this an exhibit.

20 MR. IGLITZIN: Yes.

21 HEARING OFFICER ZWEIGHAFT: Well, then, you need to email  
22 it as an exhibit.

23 MR. IGLITZIN: Okay. We will do that. This law firm has  
24 known since April, the basis of its objections. It has had  
25 since April to find an attorney who can put on this case who is



1 not also a percipient witness for Starbucks. According to its  
2 website, Littler Mendelson has in excess of 1,500 attorneys.  
3 There are two other attorneys present -- at least two other  
4 attorneys present even on these Zoom calls who are able and  
5 capable of putting on a case.

6 But for Littler Mendelson to decide to ask Ms. Doud to be  
7 the advocate in this case knowing the entire time that it also  
8 planned on using her as a material witness, is to the Union,  
9 inexplicable and inappropriate on its face to call yourself,  
10 essentially, as a witness on a matter more substantial than  
11 authenticating a document or something else that is not likely  
12 to be in dispute.

13 We believe as we understand the Florida bar rules that  
14 it's a violation of the rules of professional conduct  
15 applicable to Ms. Doud, for Ms. Doud to attempt to be both  
16 advocate and witness in the same proceeding. And we believe  
17 that the Board's rules incorporate the pertinent bar rules by  
18 reference.

19 So we -- we think it's shocking and -- in inappropriate  
20 and there is a good justification for Starbucks to call Ms.  
21 Doud -- or to let them call Ms. Doud when there are at least  
22 two other identified Starbucks representatives who are not the  
23 advocate in this case could just as easily be called as a  
24 witness. And we have yet to hear an estimation as why Ms. Doud  
25 is uniquely qualified to be that witness.

1           We are left to infer that is precisely because she is also  
2           the litigator and the advocate who has been managing this --  
3           this case as a lawyer that Starbucks things makes her a better  
4           witness. And that's exactly what these rules are meant to  
5           prohibit. Thank you.

6           MR. MENDELSON: So Madam Hearing Office, a couple of  
7           things to say. First of all, we obviously already discussed  
8           this the other day and you confirmed on the record that your  
9           experience is my experience, that lawyers frequently are  
10          witnesses in these proceedings because lawyers, in many  
11          instances, are fact witnesses on these kind of things. Ms.  
12          Doud is a fact witness here no different than Mr. Frumkin was a  
13          fact witness. That's why I'm calling her. She has the most  
14          knowledge here among anyone who's here on behalf of Starbucks.

15          She -- she has served in a limited role as an advocate  
16          when you have asked questions that are either procedural  
17          relating to the Board processes that have been at play here or  
18          where you actually were asking factual questions. We had some  
19          colloquy about what happened at the ballot count when Ms. Doud  
20          was there.

21          The real problem here, of course, is that the folks who  
22          have the most knowledge, who have the actual knowledge about  
23          the actual documents are -- are the Region 14 representatives  
24          and the whistleblower. And we have been foreclosed from  
25          bringing them -- we have said from the outset of this case that

1 had we been given permission to execute on our subpoenas, or in  
2 the case of the whistleblower, bring that whistleblower  
3 forward, this would have been a very economical proceeding.  
4 But we have been foreclosed.

5 And that's ironic because the spokesperson for the Board  
6 earlier this week said that there are normal channels to pursue  
7 and here we are pursuing them, but we are being stopped from  
8 eliciting the evidence that exists. In the case of the Board's  
9 records, which of course, would be in the Board's custody,  
10 the best evidence.

11 So I believe New York and New Jersey have rules similar to  
12 Florida. I've been involved in proceedings before the Board as  
13 well as the federal courts where lawyers were both at counsel  
14 table and fact witnesses. And I think the obvious intention of  
15 the rule in almost any state is to make sure the jurors cannot  
16 be unduly influenced by a person having a dual role. You're  
17 not a juror. You are an experienced labor relations person.  
18 Forgive me for not knowing for sure, but I imagine you are a  
19 lawyer.

20 HEARING OFFICER ZWEIGHAFT: Thanks for the vote of  
21 confidence.

22 MR. MENDELSON: Sorry?

23 HEARING OFFICER ZWEIGHAFT: Thank you for the vote of  
24 confidence.

25 MR. MENDELSON: Well, whether you are or not, you

1 obviously have experience and proficiency here. You are able  
2 to separate Ms. Doud's roles and we respectfully submit that  
3 this is -- I'm not sure why, another delay tactic. We've been  
4 foreclosed from questioning the employees that you permitted us  
5 to question. And so we now bring forward Ms. Doud out of --  
6 out of sequence, but that is what we are forced to do under the  
7 circumstances and so we respectfully request that you deny this  
8 renewed application and let us proceed with putting on our  
9 case.

10 HEARING OFFICER ZWEIGHAFT: Mr. Iglitzin, do you have  
11 anything to add?

12 MR. IGLITZIN: Only that the analogy of Mr. Frumkin being  
13 called as a witness in this proceeding is clearly in opposite.  
14 Mr. Frumkin was called over our heated objections. We took the  
15 position with regard to Mr. Frumkin as well, that it's not  
16 appropriate for an attorney to be both advocate and witness.  
17 But that was forced upon us. We did not seek that.

18 HEARING OFFICER ZWEIGHAFT: Ms. Schneider, do you have any  
19 position? Or do you want to add anything?

20 MS. SCHNEIDER: I don't.

21 HEARING OFFICER ZWEIGHAFT: Thank you.

22 MS. SCHNEIDER: Thank you.

23 HEARING OFFICER ZWEIGHAFT: All right. I -- I will allow  
24 Ms. Dowd to testify. The language that's even cited in the  
25 letter from the Union does talk about whether the tribunal is

1     likely to be misled. And I do not think that I'm likely to be  
2     misled. I think that I do understand the role of Ms. Doud  
3     testifying as a fact witness. And just like I was with Mr.  
4     Frumkin, I don't think that it will be confusing on the record  
5     to other readers of the record that she is testifying as a fact  
6     witness. I don't think it's prejudicial, and I will allow it.

7           MR. IGLITZIN: Thank you.

8           MR. MENDELSON: Thank you.

9           HEARING OFFICER ZWEIGHAFT: Okay. Are there any other  
10    preliminary matters before the Employer calls its next witness?

11          MR. MENDELSON: Yes, the Employer does have a couple of  
12    housekeeping items. So we want to make sure that the rulings  
13    on the petitions to revoke are part of the record under  
14    102.65(a).

15          HEARING OFFICER ZWEIGHAFT: Definitely.

16          MR. MENDELSON: I recognize certainly that certainly the  
17    rulings about (b) (6), (b) (7)(C) [REDACTED] and (b) (6), (b) (7)(C) [REDACTED] were adverse to the  
18    Employer. So we are agreed that we're entitled that we will  
19    have your rulings on the record.

20          I also believe, and forgive me if I'm uncertain about  
21    this, I also believe that we should have the underlying papers  
22    presented to you in the record. We don't have to detain on  
23    that now. One -- one of the things I think I said already, is  
24    that one reason we have so many exhibits is that we did mark  
25    all the petitions to revoke and responses. And so we can do

1 that housekeeping later, I suppose, just to make sure the  
2 correct documents on the VTR involving (b) (6), (b) (7)(C) and -- (b) (6), (b) (7)(C)  
3 (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) are part of the record.

4 And although you reserved your ruling, you denied -- you  
5 denied the petition to revoke by the Region, but you reserved  
6 your ruling on it, and you denied it at this time, we think  
7 we're aggrieved by that because we think that for the reasons  
8 that were just discussed, we could put our case on much more  
9 economically and in a different sequence if the Region 14  
10 personnel and records were made available to us and the  
11 whistleblower was permitted to testify. So we'd like to have  
12 your rulings on that and the underlying papers on that also  
13 marked and our exhibits in the record as well.

14 HEARING OFFICER ZWEIGHAFT: Okay, that's fine. I think we  
15 can get that ready off the record and then do that.

16 Is there any objection to those papers coming in, subject  
17 to just kind of getting them cleaned up, from the Union or from  
18 Ms. Schneider?

19 MS. SCHNEIDER: I have no objection.

20 HEARING OFFICER ZWEIGHAFT: And -- Mr. Iglitzin, you've  
21 gone off camera.

22 MR. IGLITZIN: I have no objection either, thank you.

23 HEARING OFFICER ZWEIGHAFT: All right. So -- and I --  
24 that's fine. I -- I will note that I do think that even the  
25 case law that you cited -- that the Employer cited for the

1 proposition that I could rule on the Region's petition to  
2 revoke does talk about seeing whatever evidence comes into the  
3 record before -- before ruling on that so I don't -- I don't  
4 know that I think that -- that's an adverse ruling. I think  
5 that that's clearly within the -- with what the courts  
6 contemplate. But having said that, I -- I have no problem with  
7 any of that coming in.

8 MR. MENDELSON: Thank you.

9 HEARING OFFICER ZWEIGHAFT: Okay.

10 MR. MENDELSON: I do have another -- another matter.

11 HEARING OFFICER ZWEIGHAFT: Okay.

12 MR. MENDELSON: I reviewed the introduction of the -- the  
13 beginning of the hearing, I guess is when -- but it and my  
14 understanding is that Ms. Schneider is here on behalf of Region  
15 14. On the other hand, this matter has been referred to Region  
16 29 in connection with the investigation. I think that's normal  
17 protocol at the Board if there is -- a spoilation misconduct  
18 allegations it gets referred to another region. I -- I guess I  
19 want clarity that Region 29 is the Region that controls  
20 disposition of these objections.

21 HEARING OFFICER ZWEIGHAFT: Yes.

22 MR. MENDELSON: Okay. Thank you.

23 HEARING OFFICER ZWEIGHAFT: If that's any -- any ruling  
24 that I make, if there is an appeal of that ruling, it goes to  
25 the Regional Director for Region 29.

1           MR. MENDELSON: Okay. Thank you. Related to that,  
2       yesterday I mentioned the Glass decision, which is a Board  
3       decision. I think I gave the citation yesterday -- not  
4       yesterday I'm sorry, on Wednesday.

5           HEARING OFFICER ZWEIGHAFT: Yeah.

6           MR. MENDELSON: And in -- in thinking about how this is  
7       unfolding, my understanding is that Ms. Schneider's role here  
8       is to, provide the hearing officer information that the parties  
9       cannot provide because it's not even within their knowledge or  
10      otherwise.

11          And it occurred to us that we're -- we're -- we're  
12      perplexed that if that is the role of the Region 14  
13      representative, they're here not in a partisan capacity, but in  
14      that kind of advisory capacity, we're unclear as to why  
15      separate and apart from 102.8 -- 102.118 Region 14 is not  
16      simply making available to you and the parties the documents.  
17      Let's start with the documents that Region 14 has within its  
18      possession. It is not subject to 102.118. And it seems to us  
19      that if the mission here for Region 14's representative is to  
20      inform the hearing officer of the information that bears on the  
21      case, there's again, a very simple avenue here to have that  
22      accomplished.

23          MS. SCHNEIDER: Would you like my response?

24          MR. MENDELSON: Sure.

25          MS. SCHNEIDER: I -- I don't have authority -- the Region,



1 does not have authority to provide documents that the General  
2 Counsel has stated cannot be provided. And I -- I think that  
3 it may be appropriate now for me to notify Hearing Officer  
4 Zweighaft that on August 17th on Wednesday, the Employer  
5 reiterated -- renewed its request by letter to the General  
6 Counsel for disclosures of documents and testimony from Region  
7 14 and by letter on August 18th, the General Counsel again  
8 denied production of documents and testimony.

9 And again today, August 19th, Starbucks by letter to both  
10 General Counsel Abruzzo and Regional Director Drew King of  
11 Region 29, renewed its request again. So those -- those  
12 documents are available. I have not marked them. If -- if  
13 they -- if you think it would be helpful for them to be part of  
14 the record I can prepare them for such. But I just want you to  
15 be aware of the sequence. Okay?

16 HEARING OFFICER ZWEIGHAFT: Well, thank you. I thank you  
17 for the clarification. I appreciate it.

18 HEARING OFFICER ZWEIGHAFT: Yeah, those are not part of  
19 the record. I don't know that they need to be part of the  
20 record. You know, if -- if the Region wishes to put them in or  
21 if the Employer wishes to put them in to preserve an argument,  
22 you know, I wouldn't be opposed to that.

23 Mr. Mendelsohn, do you have a position on any of that?

24 MR. MENDELSON: Well, we -- we think they should be part  
25 of the record. We're -- we're agreeable to that.

1 HEARING OFFICER ZWEIGHAFT: Okay. I don't know if  
2 they're --

3 MS. CARTER: I can prepare them to be introduced as  
4 Employer exhibits.

5 HEARING OFFICER ZWEIGHAFT: Thank you, Ms. Carter. So  
6 we -- it seems like we -- we'll have some time on the record  
7 today where we're dealing with taking a bunch of documents into  
8 the record. So we'll be prepared to do that later.

9 Okay. Anything else prior to -- did Ms. Schneider answer  
10 your questions, Mr. Mendelsohn or no?

11 MR. MENDELSON: Well -- well, I -- I was aiming not to be  
12 argumentative. I -- I heard her answer. She's declared that  
13 the General Counsel has denied availability of that  
14 information. I'm not knowledgeable about the Board's internal  
15 processes. I only know the Region is not subject to 102.118,  
16 at least I don't think it is. And so it did occur to me that  
17 the I don't know, I'm just being redundant. If the goal is for  
18 the information that the Regional representative has access to  
19 is to be provided to you to help you decide the case it's  
20 really puzzling to me that the Regional representative has not  
21 provided that to you. She's answered it. She says she doesn't  
22 have the authority. I -- I have no ability to investigate  
23 that.

24 HEARING OFFICER ZWEIGHAFT: Yeah, but that is I mean, I  
25 will just confirm that would be my understanding as well that

1 the Region for the counsel does not have the authority to turn  
2 over something, if the General Counsel has ruled that it's not  
3 going to be turned over.

4 MR. MENDELSON: Okay. I do -- I do have another matter.  
5 As I said, I have a few matters. We now ask at this time that  
6 you permit the company to call the whistleblower to testify at  
7 this proceeding with a protective order in place so that the  
8 whistleblower's identity is not disclosed outside the records  
9 of this case.

10 MR. MENDELSON: Okay. I am -- I am not going to grant  
11 that at this time.

12 MR. MENDELSON: Okay. So the Company's position is that  
13 it prejudiced by the failure of the Regional Director or  
14 General Counsel to authorize the whistleblower to testify in  
15 this hearing. At this juncture, given the extensive knowledge  
16 the whistleblower has of the facts, I have -- I have compared,  
17 at least in part, our understanding of the whistleblower's  
18 knowledge against the documents that the Union -- that Union  
19 counsel produced the other day.

20 And I can tell you that what the whistleblower has  
21 maintained is consistent with what those documents indicate,  
22 which goes to the reliability of the whistleblower. The  
23 whistleblower's testimony would advance this case to a  
24 conclusion very quickly. And we maintain that the failure of  
25 the Regional Director and General Counsel to permit that

1 testimony this time, and your ruling, prevents this case  
2 advancing to conclusion expeditiously, as it should.

3 And in light of the denial of this request to have the  
4 whistleblower testify, we would like to, and will make an offer  
5 of proof. We have reduced that to writing. I think I just  
6 need five minutes. I don't know that I signed it, and I think  
7 I just need five minutes to grab that document with Ms. Carter  
8 and -- and execute it and it would be more efficient, although  
9 I'd to read a portion of it into the record. But at this time,  
10 I think that's what we would like to do.

11 HEARING OFFICER ZWEIGHAFT: Ms. Schneider, do you have any  
12 position on that?

13 MS. SCHNEIDER: I -- I don't have a position on that. But  
14 may I suggest that in addition to the documents that Ms. Carter  
15 will be preparing as exhibits reflecting the communications  
16 between Starbucks and the General Counsel about the documents  
17 and testimony from Board agents, that the documents between the  
18 Employer and Region 29's Regional Director about the testimony  
19 from the whistleblower also be prepared as exhibits so those  
20 could become part of the record.

21 MR. MENDELSON: That -- that's fine.

22 MS. SCHNEIDER: Thank you.

23 HEARING OFFICER ZWEIGHAFT: Okay. Mr. Iglitzin, do you  
24 have a position?

25 MR. IGLITZIN: I'm -- I was a little unclear why it's more

1 efficient to read something into the record than just put the  
2 document that is going to be read from into the record. But  
3 I'm the last person at this hearing who's going to be starting  
4 talking about needless delay.

5 MR. MENDELSON: Okay. All right. Mr. Mendelson, you may  
6 proceed. And then it sounds like you just need a very short  
7 break.

8 MR. MENDELSON: Right. If we -- if we could come back in  
9 five minutes? I just need to --

10 HEARING OFFICER ZWEIGHAFT: You want --

11 MR. MENDELSON: -- communicate with Ms. Carter.

12 HEARING OFFICER ZWEIGHAFT: You want to take the break  
13 now?

14 MR. MENDELSON: Yeah. Yeah, I think that makes sense.

15 HEARING OFFICER ZWEIGHAFT: Okay. That's fine. Off the  
16 record.

17 (Off the record at 11:32 a.m.)

18 HEARING OFFICER ZWEIGHAFT: Okay. So while we were off  
19 the record, the Employer has circulated a written offer of  
20 proof to the parties. I believe it's being marked for  
21 identification.

22 Mr. Mendelson, I'll let you make your representation on  
23 the record.

24 MR. MENDELSON: Yes, we're marking this as Employer  
25 Exhibit 80. Ms. Carter may circulate another copy of it.

1 It'll be the same copy just having that exhibit identification  
2 on it.

3 HEARING OFFICER ZWEIGHAFT: Okay. And do you want to -- I  
4 know, there was a -- obviously, there's the argument that the  
5 document speaks for itself, but I think you wanted to address  
6 it.

7 MR. MENDELSON: Yes. I -- I would like to read a portion  
8 of these paragraphs. As everyone can see, it runs from  
9 paragraphs 1 through 28. It's what we maintain would be  
10 established if Region 14 was to produce the documents we  
11 subpoenaed and permit witnesses to come forward. Witnesses  
12 be -- the subpoenaed people are (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), (b) (6), (b) (7)(C),  
13 (b) (6), (b) (7)(C), and forgive me, a fourth person is (b) (6), (b) (7)(C), I don't  
14 remember the last name.

15 They would testify at a minimum we believe to what is in  
16 here and presumably possibly more. I wanted to read certain  
17 paragraphs that I am fairly well convinced were not touched on  
18 by Mr. Frumkin. There are some paragraphs where some of his  
19 documents or testimony may have touched on them. But these are  
20 paragraphs I believe nothing in the record from his testimony  
21 this past Wednesday relates to it and so by reading them into  
22 the record I wanted the transcript to have this content because  
23 it's consistent with the company's position that the only way  
24 to have an adequate and complete record here is to have the  
25 Region 14 personnel testify.

1           And so with your indulgence, I'll be fast about it. I'll  
2           identify the paragraph and just read it into the record  
3           verbatim and ask you to move this offer of proof into evidence.

4           MR. IGLITZIN: How much are you --

5           HEARING OFFICER ZWEIGHAFT: Wait, how many paragraphs are  
6           you reading?

7           MR. MENDELSON: I'm sorry?

8           HEARING OFFICER ZWEIGHAFT: How many -- how much of this  
9           are you reading?

10          MR. MENDELSON: I -- I think it's approximately 13 or 14  
11          of them.

12          MR. IGLITZIN: And I'm going to object. The exhibit is in  
13          the record, it speaks for itself. It's performative for Mr.  
14          Mendelson to simply read it aloud.

15          HEARING OFFICER ZWEIGHAFT: Okay. Yeah, I don't -- I  
16          don't think we need to -- if it's if it's coming in as an  
17          exhibit, is there any objection to it coming in as an exhibit?

18          MR. IGLITZIN: There is not.

19          HEARING OFFICER ZWEIGHAFT: Ms. Schneider?

20          MS. SCHNEIDER: No, no objection.

21          HEARING OFFICER ZWEIGHAFT: Yeah, I don't think we need to  
22          read 13 or 14 paragraphs. I will of course, let you identify  
23          the paragraphs in here that you don't think would be covered by  
24          other evidence, I think that would actually be helpful. But I  
25          don't think we need them, like, read into the report. It

1 will -- they be will be in the record.

2 MR. MENDELSON: Very good. Very good. So I'm not 100  
3 percent certain I'm correct, but paragraphs -- the following  
4 paragraphs I believe are not addressed by Mr. Frumkin's  
5 testimony or the documents that were served the other day.

6 Paragraphs 4, 5, 6, 7, 8, 13, 14, 16, 17, 24, 25, 26, 27,  
7 and 28.

8 HEARING OFFICER ZWEIGHAFT: Okay. Thank you. And are you  
9 offering this?

10 MR. MENDELSON: Yes.

11 HEARING OFFICER ZWEIGHAFT: So the Employer offers  
12 Employer Exhibit 80. And the -- the Union and the Region  
13 have -- have indicated no objection; is that correct?

14 MR. IGLITZIN: That's correct.

15 HEARING OFFICER ZWEIGHAFT: Ms. Schneider can you just --

16 MS. SCHNEIDER: Correct.

17 HEARING OFFICER ZWEIGHAFT: Okay. Thank you. Okay.  
18 Employer Exhibit 80 is -- is accepted; is received into the  
19 record.

20 **(Employer Exhibit Number 80 Received into Evidence)**

21 HEARING OFFICER ZWEIGHAFT: I will note that this is an  
22 offer of proof. I am accepting it into the record because of  
23 the issue regarding the subpoenas and who may testify and am  
24 allowing the Employer to put it in for that purpose. I want to  
25 be clear on the record that I'm not accepting this as evidence.



1 I won't rely on an offer -- on this offer in a -- you know, as  
2 a basis for a decision at this point. It's coming in as an  
3 offer proof. So I just -- I just want to be clear about the  
4 purposes for which I see it coming into the record right now.  
5 Okay?

6 And I -- and those paragraphs that Mr. Mendelson has --has  
7 listed are highlighted for my purposes, and I appreciate that.  
8 Thank you. Okay.

9 Anything -- anything else before we get started with  
10 testimony?

11 MR. MENDELSON: No, I think that is it. We would be  
12 calling the three employees that you permitted us to call. But  
13 given the Court was on the record already, we're not able to  
14 call them. And so at this point, we will call Ms. Doud, as our  
15 witness.

16 HEARING OFFICER ZWEIGHAFT: Okay. So let me just say --  
17 I'm sorry Ms. Doud, before I swear you in, I believe the appeal  
18 about my -- about my judgment my decision allowing those three  
19 witnesses to testify has been filed at this point. I'm hopeful  
20 that we get a quick ruling on that and we would be able to  
21 proceed, you know, one way or another with those -- either with  
22 those witnesses or without those witnesses, depending on the  
23 ruling, on the appeal. Okay. But I am -- but it has been  
24 filed. All right.

25 Ms. Doud.

1 MS. DOUD: Yes.

2 HEARING OFFICER ZWEIGHAFT: Please raise your right hand.

3 Whereupon,

4 **KIMBERLY DOUD**

5 having been duly sworn, was called as a witness herein and was  
6 examined and testified, telephonically as follows:

7 HEARING OFFICER ZWEIGHAFT: Okay. Thank you. Can you  
8 please state and spell your name for the record?

9 THE WITNESS: Yes. Kimberly Doud. D as in Delta, O-U, D  
10 as in Delta.

11 HEARING OFFICER ZWEIGHAFT: Okay. And I will just, you  
12 know, for the purposes of the record, clarify once again, that  
13 Ms. Doud is being offered as a fact, witness regarding the  
14 objections that the Employer has filed.

15 Mr. Mendelson, you may proceed.

16 MR. MENDELSON: Thank you.

17 **DIRECT EXAMINATION**

18 Q BY MR. MENDELSON: Ms. Doud, do you know whether in  
19 seeking representation at this store, I think I'll refer to it  
20 at as the container store, the Union at the outset sought any  
21 particular kind of election in terms of the mechanics of the  
22 balloting.

23 A Yes. The Union sought a mail ballot.

24 Q Okay.

25 MR. MENDELSON: And at this time, I'm going to ask Ms.

1 Carter to assist me. So I'm sorry, let me back up. Betsy,  
2 we've circulated the exhibits.

3 MS. CARTER: Yes. We have circulated. I think there's a  
4 couple that I'm still circulating.

5 MR. MENDELSON: Yeah. Okay. We'll -- we'll deal with  
6 those when we get to them. And -- and -- and everyone, forgive  
7 me. I -- I may be one digit off in some instances. Ms. Carter  
8 will correct me, but I'm going to try to do it from the  
9 standpoint that I believe I'm using the number that you all  
10 have.

11 HEARING OFFICER ZWEIGHAFT: Okay.

12 MR. MENDELSON: So Ms. Carter will correct me. I'd like  
13 to show Ms. Doud what I believe is Employer Exhibit 51.

14 Q BY MR. MENDELSON: Ms. Doud, do you have the exhibits?

15 A I do. I wasn't sure from that whether it was going to be  
16 shared on the screen or you wanted me to pull it up. So I pull  
17 it up.

18 Q Yeah.

19 THE WITNESS: I wonder if it is easier to share on the  
20 screen.

21 MS. CARTER: Yeah, I think I can do Jed, and -- and then  
22 we can make sure that we have the right numbers.

23 MR. MENDELSON: Okay, very good. Okay. Everybody else  
24 has the right to do that, I'm probably the one who doesn't, but  
25 okay.

1 THE WITNESS: I'm going to close this then. So.

2 MS. CARTER: Okay.

3 HEARING OFFICER ZWEIGHAFT: So Ms. Carter, I've allowed  
4 screen sharing in -- in -- on the Zoom, so you should be able  
5 to share it. Right.

6 MR. MENDELSON: No, that's not the right one. This is 52,  
7 Betsy?

8 MS. CARTER: Okay. Is it the RC petition you're looking  
9 for?

10 MR. MENDELSON: Well, I wanted the witness to testify, but  
11 go ahead, yeah.

12 MS. CARTER: Well, I'll just trying to identify.

13 HEARING OFFICER ZWEIGHAFT: And you can --

14 MR. MENDELSON: Madam Hearing Officer I should have been  
15 in Orlando with Ms. Carter and Ms. Doud. I have a son getting  
16 married on Sunday, so I couldn't be there.

17 HEARING OFFICER ZWEIGHAFT: Okay. First of all,  
18 congratulations.

19 MR. MENDELSON: Thank you.

20 HEARING OFFICER ZWEIGHAFT: Second of all, that's fine.  
21 We're -- this is -- this is -- this is fine. Thank you. Okay.  
22 We are looking at what's been marked for identification as  
23 Employer Exhibit 2 (sic), and it's an RC petition.

24 MS. CARTER: Sorry.

25 MR. MENDELSON: 52. 52.

1 HEARING OFFICER ZWEIGHAFT: 52, did I -- did I say the  
2 wrong things?

3 MR. MENDELSON: You said 2, I think.

4 HEARING OFFICER ZWEIGHAFT: Oh, I'm sorry, 52.

5 Q BY MR. MENDELSON: Okay. Ms. -- Ms. Doud, do you  
6 recognize this document?

7 A Yes, I do. It's the RC petition.

8 Q And does it indicate the type of election the Union  
9 sought?

10 A Can you -- let's -- yeah. Scroll. Thank you.

11 Yes, in box 11A, mail is checked.

12 MR. MENDELSON: Okay. We move the admission of Employer  
13 Exhibit 52.

14 HEARING OFFICER ZWEIGHAFT: Okay. Can you just scroll  
15 back up? There's no -- this is a copy of the petition that  
16 does not have a case number on it. But I take it that we can  
17 tell from the address that it's this case number 14-RC-289926;  
18 is that correct?

19 MS. CARTER: That's correct.

20 HEARING OFFICER ZWEIGHAFT: Okay. Is there any -- does  
21 everybody agree that this is the -- this is the petition for  
22 this case number?

23 MR. IGLITZIN: We will have to check our -- our records.  
24 I can't -- I can't verify accurate authenticity with -- when it  
25 has no case number, and -- and having just seen it for the

1 first time now.

2 HEARING OFFICER ZWEIGHAFT: Okay. Is that the -- that's  
3 the address of the store that's listed in the unit description?

4 MR. MENDELSON: Correct.

5 HEARING OFFICER ZWEIGHAFT: Okay. All right. All right.  
6 I'll -- I'll reserve ruling and just let the Union double-check  
7 the petition since there's no case number. But it -- it does  
8 appear to be the same store. So okay. You can proceed.

9 MR. MENDELSON: Thank you. I think the next -- well, let  
10 me ask the question.

11 Q BY MR. MENDELSON: Do you know whether the company took a  
12 position as to the kind of election this should be in terms of  
13 the balloting?

14 A Yes. The company also requested a mail-ballot election.

15 MR. MENDELSON: And -- and Ms. Carter, I think this is a  
16 document that I think you marked as Employer Exhibit 77, so you  
17 might have to circulate that one by -- by email.

18 MS. CARTER: Yes, I'll -- I can resend it. It was in the  
19 batch circulated earlier with the --

20 MR. MENDELSON: Oh, I'm sorry.

21 MS. CARTER: It's an -- it's Employer Exhibit 63 to 77,  
22 the last six of it.

23 MR. MENDELSON: So Ms. Doud, you'll have to access those  
24 PDFs.

25 Okay. Oh, I'm sorry. Okay. Ms. -- Ms. Carter shared it.

1 HEARING OFFICER ZWEIGHAFT: Yes, I think it's easier if  
2 we --

3 MR. MENDELSON: Yeah.

4 HEARING OFFICER ZWEIGHAFT: This is -- okay.

5 MR. MENDELSON: I -- I didn't realize. I'm sorry.

6 Q BY MR. MENDELSON: So Ms. Doud, can you -- Ms. Carter can  
7 scroll down. Can you show us where it indicates the Employer's  
8 expression of preference?

9 A Yes, it is in box 8-A, mail is marked.

10 Q Okay.

11 MR. MENDELSON: And if Ms. Carter can scroll back up just  
12 to make sure the case number is probably on this one day there.

13 HEARING OFFICER ZWEIGHAFT: It is. Yeah.

14 MR. MENDELSON: So we move the admission of Employer 77.

15 HEARING OFFICER ZWEIGHAFT: Any objection?

16 MR. IGLITZIN: No objection. And I have verified that the  
17 prior exhibit that was -- the Union's petition with no case  
18 number, is an authentic -- does match our records, so I have no  
19 objection to that as well.

20 HEARING OFFICER ZWEIGHAFT: Okay. Thank you.

21 Ms. Schneider, any objection to either 52 or 77?

22 MS. SCHNEIDER: No objection. And I also verified.

23 HEARING OFFICER ZWEIGHAFT: Thank you. Okay. Exhibits --  
24 are you offering both of these exhibits, Mr. Mendelson?

25 MR. MENDELSON: Yes.

1 HEARING OFFICER ZWEIGHAFT: Okay. Both Employer 52 and  
2 Employer 77 are received.

3 **(Employer Exhibit Numbers 52 and 77 Received into Evidence)**

4 MR. MENDELSON: Thank you.

5 Q BY MR. MENDELSON: Ms. Doud, do you know what ultimately  
6 was decided in terms of what the mechanics of the election were  
7 to be, in terms of how the balloting was to be undertaken?

8 A Yes.

9 Q And what -- what was it?

10 A We entered into Starbucks and the Union, with Region 14's  
11 approval, entered into a stipulated election agreement for a  
12 mail ballot only election.

13 Q Okay.

14 MR. MENDELSON: And I'm going to ask Ms. Carter to show  
15 you that document. I -- I believe it's Employer 40, but Ms.  
16 Carter will double-check that.

17 MS. CARTER: It is Employer Exhibit 40.

18 MR. MENDELSON: Okay. I got one right. Can we -- there  
19 it is. Why don't you scroll it, Ms. Carter, and let Ms. Doud  
20 take a look at it. Okay. Can you scroll back up?

21 Q BY MR. MENDELSON: And Ms. Doud, does it indicate it's a  
22 mail-ballot election?

23 A Yes, it does. In paragraph 4 it says, "Election. The  
24 election will be conducted by United States mail."

25 Q Okay.



1 MR. MENDELSON: Move the admission of this document.

2 HEARING OFFICER ZWEIGHAFT: Any objection.

3 MR. IGLITZIN: Not from the Union.

4 MS. SCHNEIDER: I'm sorry. I don't have it separately  
5 pulled up. Would you mind scrolling all the way down so we can  
6 see if this is the executed version?

7 Thank you. Thank you. No objection.

8 HEARING OFFICER ZWEIGHAFT: Okay. Employer Exhibit 40 is  
9 received.

10 **(Employer Exhibit Number 40 Received into Evidence)**

11 MR. MENDELSON: Okay. and you can take that away, Ms.  
12 Carter.

13 Q BY MR. MENDELSON: Ms. Doud -- Once --

14 MR. MENDELSON: Sorry, strike that.

15 Q BY MR. MENDELSON: The -- the discussions and any other  
16 communications leading up to the execution of Employer 40, was  
17 there any communication between the company, Union and/or  
18 Region about the Region transmitting the ballots to eligible  
19 voters other than by mail?

20 A No.

21 Q And with respect to the discussions and communications  
22 between the company, Union and Region leading up to execution  
23 of the stipulation Employer 40, was there any communication  
24 about the employees casting their ballots other than by mail?

25 A No.

1 Q And other than the stipulation document, are you aware of  
2 any other NLRB related documents that address the mechanics in  
3 terms of how the ballots were to be cast?

4 A Other than the petitions, the SOP that we just looked at,  
5 the stipulated election agreement, and the notice of elections;  
6 the notice of elections talks about the manner of the election.

7 MR. MENDELSON: Okay. So Ms. -- Ms. Carter can you show  
8 her what I believe is Employer 54? No, I may be wrong about  
9 that. Probably not 54.

10 Scroll down. It might be attached, it might not. Okay.  
11 There it is. It is 54. Okay.

12 MS. CARTER: I -- I think it's 55.

13 MR. MENDELSON: Oh, I'm sorry. Okay. Sorry.

14 Q BY MR. MENDELSON: Employer 55, Ms. Doud?

15 A Yes. That's the notice of election.

16 Q And what does it indicate?

17 A Under method and date of election, it says, the  
18 election -- sorry it's small on my screen. "The election will  
19 be conducted by United States mail."

20 Q Okay.

21 MR. MENDELSON: Ms. Carter, would you scroll back up into  
22 54 for a moment? I'll say when to stop.

23 Okay. Stop -- stop there.

24 Q BY MR. MENDELSON: Ms. -- Ms. Doud, this is Employer 54.

25 Does this document also indicate the method of election?

1 HEARING OFFICER ZWEIGHAFT: Okay. Well, let's identify  
2 what the document is.

3 MR. MENDELSON: Ms. Carter, I think you need to scroll to  
4 the top of it.

5 A Exhibit 54 is a letter from Region 14 to myself, Ms.  
6 Carter, Mr. Frumkin, Mr. Iglitzin, and Mr. Cervone, and it  
7 encloses the notice of election and the copy of the election  
8 agreement that was approved.

9 MR. MENDELSON: Okay. And if we scroll back to the third  
10 page.

11 Q BY MR. MENDELSON: Does -- does it indicate the mechanics  
12 involved in terms of the way ballots were to be distributed and  
13 cast?

14 A Yes, it does. It has a heading for election arrangements  
15 and then it gives the date and time for mail ballots to be sent  
16 to voters, which was supposed to be March 16th. The date the  
17 voters themselves are requested to notify the Regional Office  
18 if they have not received a ballot, and it says March 23rd.  
19 The date to mail ballots -- do you want to keep going? Sorry.

20 Q Go ahead. I didn't mean to interrupt you.

21 A The date mail ballots from voters must be received is 6th,  
22 then it gives a ballot count of April 8th.

23 Q Okay.

24 MR. MENDELSON: You can take away these documents. I do  
25 move the admission of Employer 55 and 54.

1 HEARING OFFICER ZWEIGHAFT: Any objection.

2 Ms. Schneider, any objection to 55 or 54?

3 MS. SCHNEIDER: No objection.

4 HEARING OFFICER ZWEIGHAFT: Mr. Iglitzin?

5 MS. SCHNEIDER: You're on mute. I don't know if you know  
6 that. I can't hear him.

7 HEARING OFFICER ZWEIGHAFT: I can't hear him either.

8 MR. IGLITZIN: Sorry. I was unable to unmute for a  
9 moment. Yeah. No objection from the Union.

10 HEARING OFFICER ZWEIGHAFT: Okay. Employer's 55 and 54  
11 are received.

12 **(Employer Exhibit Numbers 54 and 55 Received into Evidence)**

13 MR. MENDELSON: Thank you.

14 Q BY MR. MENDELSON: Ms. Doud, once the stipulation was  
15 executed are you aware of any way the mechanics of the election  
16 were susceptible to being altered?

17 A The Regional Director could reschedule the election.  
18 That's all I'm aware.

19 Q Okay. And when you say reschedule, what do you mean by  
20 that?

21 A Change the date and time of the election.

22 Q Anything -- anything else?

23 A I believe that if the manner of the election is to be  
24 changed, the Regional Director has to change it.

25 Q And by manner of election, what do you mean?



1 A Changing it from a mail ballot to either a manual or a  
2 mixed mail.

3 Q Okay. And do -- do you do you know, in event that was to  
4 happen, what the mechanics of the Regional Director doing that  
5 are?

6 A The Regional Director is supposed to notify the parties.

7 Q Okay. In this election case did you ever receive any note  
8 that the Regional Director had changed the mechanics of the  
9 election from, in any respect whole or in part, a mail ballot  
10 to an in-person or manual election?

11 A No.

12 Q Following the execution of the stipulation, what next  
13 happened in connection with this case?

14 A The next thing that happened was the Employer created  
15 voter lists and transmitted the voter list. So Betsy -- Ms.  
16 Carter, excuse me with a copy -- I was copied on the email sent  
17 to the voter list on March 1st to the Region and the Union.

18 MR. MENDELSON: Okay. I believe, Ms. Carter, you can show  
19 the witness Employer Exhibit 41?

20 Q BY MR. MENDELSON: Do you recognize this document, Ms.  
21 Doud?

22 A Yes. This is the transmittal email from Ms. Carter to the  
23 voter list.

24 Q Okay.

25 MR. MENDELSON: And if Ms. Carter can just scroll down.

1 I -- I just wanted to confirm this was the redacted version.

2 Okay. Ms. Carter, you can take that away.

3 Q BY MR. MENDELSON: After this list was transmitted to the  
4 Region and the Union, what, if anything, happened, Ms. Doud?

5 A Yeah. That voter list contained 18 people. The same day  
6 on March 1st, Mr. Frumkin notified myself and Ms. Carter there  
7 may have been others on the email that there were two voters  
8 that were not on the list. And so we created an amended voter  
9 list that was transmitted on March 2nd to include those two.  
10 So there were 20, and it was transmitted two weeks before the  
11 mailing of the ballots was to occur.

12 Q Okay.

13 MR. MENDELSON: And Ms. Carter, can you show the witness  
14 Employer Exhibit 42?

15 Q BY MR. MENDELSON: Do you recognize this document, Ms.  
16 Doud?

17 A Yes, this is the transmittal email of the amended voter  
18 list on March 2nd.

19 MR. MENDELSON: The Employer moves the admission of  
20 Employer Exhibits 41 and 42.

21 HEARING OFFICER ZWEIGHAFT: Any objections?

22 MR. IGLITZIN: Not from the Union.

23 MS. SCHNEIDER: No objection.

24 HEARING OFFICER ZWEIGHAFT: Okay. Employer 41 and 42 are  
25 received. Thank you.

1       **(Employer Exhibit Numbers 41 and 42 Received into Evidence)**

2           MR. MENDELSON:   Just one moment.

3       Q     BY MR. MENDELSON:   Ms. Doud, after the Employer  
4       transmitted Employer 42 was there any further communication  
5       between the Company counsel and Union counsel?

6       A     Yes.

7       Q     And what -- what happened?

8       A     Upon receipt of the amended voter list, Mr. Frumkin  
9       replied, thanking us for that list and advising us if there  
10      were any other issues, he would let us know.

11      Q     Okay.

12           MR. MENDELSON:   And I have to ask Ms. Carter, because I  
13      don't know the document number to look for a document that was  
14      not in moved in evidence on Wednesday but was provided by the  
15      Union.   It's dated March 2, and it's at 10:28 a.m.   She's got  
16      it.   It's Employer Exhibit 70.   Thank you, Ms. Carter.

17      Q     BY MR. MENDELSON:   Take a look at this document, Ms. Doud,  
18      and tell me if this is what you're referencing.

19      A     Yes, it is.

20           MR. MENDELSON:   Move the admission of Employer's 70.

21           MR. IGLITZIN:   No objection.

22           MS. SCHNEIDER:   No objection.

23           HEARING OFFICER ZWEIGHAFT:   Okay.   Employer's 70 is  
24      received.

25       **(Employer Exhibit Number 70 Received into Evidence)**

1 MR. MENDELSON: Thank you.

2 Q BY MR. MENDELSON: Ms. Doud, do you know when the Region  
3 was supposed to bail out the ballots?

4 A The Region was supposed to mail out the ballots on March  
5 16th.

6 Q And you know, when the vote count was to be conducted?

7 A Yes, the vote count was April 8th.

8 Q Okay. After the vote count had been conducted, did there  
9 come the time where you learned about things that happened in  
10 connection with this election that had been unknown to you  
11 between March 23 and March 31?

12 A Yes.

13 Q What -- what things did you learn subsequent to the vote  
14 count about events between March 23 and March 31?

15 A After the election, I learned that Mr. Frumkin had reached  
16 out to the Region, to (b) (6), (b) (7)(C), to let (b) (6), (b) (7)(C) know that there  
17 were at least seven partners who had not received ballots.

18 Q And when you say partners, just for the record, what is a  
19 partner in the lexicon you're using?

20 MR. IGLITZIN: I'm actually going to object to this  
21 question -- this entire line of questioning. We're now past  
22 the vote count and the entire topic of this election objections  
23 hearing is the vote count. What Ms. Doud learned after the  
24 vote count may go to some larger term political narrative  
25 Starbucks is trying to win, but it has no direct relevance to



1 the vote count itself.

2 In my understanding Ms. Doud's testimony was going to be  
3 about the vote count. And I have -- had, you know, forbore  
4 from objecting until now, but this is not about the narrative  
5 of what Starbucks did and didn't learn after the vote count.

6 MR. MENDELSON: Well, it's exactly what this --

7 HEARING OFFICER ZWEIGHAFT: Well, this --

8 MR. MENDELSON: I'm sorry?

9 HEARING OFFICER ZWEIGHAFT: I believe that the question  
10 was what she learned about what happened during the election  
11 that she found out about after the vote count. That was my  
12 understanding of the question. Is that --

13 MR. MENDELSON: That's correct.

14 HEARING OFFICER ZWEIGHAFT: So I'll -- I'll allow it.

15 Q BY MR. MENDELSON: Okay. Ms. Doud, apart from what you've  
16 already testified, is there anything else you learned after the  
17 election concerning events between March 23 and March 31?

18 A Yes, I --

19 MR. IGLITZIN: I'm going to object to the lack of  
20 foundation. It calls for hearsay. I think it's not a proper  
21 question, what -- what did you learn?

22 HEARING OFFICER ZWEIGHAFT: Yeah.

23 MR. IGLITZIN: Because it doesn't reveal the personal  
24 knowledge.

25 HEARING OFFICER ZWEIGHAFT: I -- yeah, I agree that that

1 may be the nature of the answer, and I'll allow some -- I'm  
2 going to allow a little leeway. We can find out how Ms. Doud  
3 knows this. If something is hearsay, I'll take that and, you  
4 know, I'll take that into consideration. But I'll allow the  
5 answer.

6 MR. MENDELSON: Thank you.

7 A Yes. (b) (6), (b) (7)(C) , (b) (6), (b) (7)(C) , one of the Board agents, and  
8 (b) (6), (b) (7)(C) , another Board agent, communicated regarding the  
9 notice that they had received about the seven ballots that had  
10 not been received based on Mr. Frumkin's representation. They  
11 talked -- or (b) (6), (b) (7)(C) said to (b) (6), (b) (7)(C) they had not had problems with  
12 the mail, so maybe this was a fluke.

13 And then there was a phone call between Mr. Frumkin and  
14 (b) (6), (b) (7)(C) on March 31st, in which Mr. Frumkin asked (b) (6), (b) (7)(C)  
15 whether three of the partners or employees from the store could  
16 go to the subregional office and vote in person that this had  
17 occurred in Region 19 as well, in Starbucks mail ballot only  
18 elections. Okay.

19 HEARING OFFICER ZWEIGHAFT: So I am actually just going to  
20 ask how you know this?

21 THE WITNESS: I learned this from the whistleblower.

22 HEARING OFFICER ZWEIGHAFT: Okay. So. All right.

23 You didn't (indiscernible simultaneous speech).

24 MR. IGLITZIN: I'll agree -- I would move to ask the  
25 hearing officer to disregard hearsay.

1 HEARING OFFICER ZWEIGHAFT: Yeah, I -- given -- given  
2 the -- well, I'm not going to strike it, but I -- I recognize  
3 that it is hearsay and I'll accept it out -- I'll grant it  
4 whatever weight I think that that is due, at that point. Thank  
5 you.

6 MR. IGLITZIN: And I just want to say, Madam Hearing  
7 Officer, that the declarant is unavailable to us, at least at  
8 this juncture, when we have an oppor --

9 HEARING OFFICER ZWEIGHAFT: I --

10 MR. IGLITZIN: I'm sorry?

11 HEARING OFFICER ZWEIGHAFT: No, I -- I understand that  
12 argument too.

13 MR. IGLITZIN: So the --

14 HEARING OFFICER ZWEIGHAFT: But just go ahead and finish  
15 your statement for the record.

16 MR. IGLITZIN: Well, our -- our position is that it's not  
17 hearsay, that under 804(b)(3), and the absence of the  
18 declarant, who's rendered unavailable to us over our objection,  
19 the statements that have been made by -- by someone who is  
20 actually a representative, an agent of the Labor Board are  
21 admissible substantively.

22 HEARING OFFICER ZWEIGHAFT: Okay.

23 MR. MENDELSON: Ms. Carter, can you show the witness  
24 Employer Exhibit 64? And scroll down for the benefit of the  
25 witness.

1 Q BY MR. MENDELSON: Ms. Doud, prior to this hearing, had  
2 you seen this communication or set of communications?

3 A Can you keep scrolling back up just so I can make --

4 MR. IGLITZIN: Object on relevance grounds.

5 HEARING OFFICER ZWEIGHAFT: Overruled.

6 A No.

7 Q BY MR. MENDELSON: And --

8 HEARING OFFICER ZWEIGHAFT: Just -- just want to -- just  
9 so that we're clear, I know that you've identified it as  
10 Exhibit 64, and this is an exhibit that was offered yesterday.  
11 I think we're just -- wait -- we were waiting for the redacted  
12 exhibit, but just -- this is a -- this is the thread of emails  
13 that starts with an email dated 3/23/2022 at 1:39:51 p.m. from  
14 Gabe Frumkin to (b) (6), (b) (7)(C) . I just wanted to identify that.

15 MR. MENDELSON: And -- and -- and actually, there are  
16 several emails on this strain.

17 HEARING OFFICER ZWEIGHAFT: Right. Right. It's a thread.  
18 It's a thread.

19 MR. MENDELSON: Thank you.

20 Q BY MR. MENDELSON: And prior to the vote count, aside  
21 perhaps -- aside from the fact that the case number is  
22 mentioned in one of the emails, were you aware of the  
23 information imparted in the emails that comprise Employer 64?

24 A No, I was not.

25 Q Okay.

1 MR. MENDELSON: Please show the witness Employer Exhibit  
2 65, then scroll down. So I believe that much of this document  
3 is redundant from 64, except the top email at the very  
4 beginning, I believe, is new.

5 Q BY MR. MENDELSON: Had you seen this -- this -- this first  
6 email before Ms. Doud?

7 A No, this is --

8 Q I'm sorry. Prior -- prior to -- did you see this email  
9 prior to the vote count?

10 A No. This adds an email from (b) (6), (b) (7)(C) to Mr. Frumkin saying (b) (6), (b) (7)(C)  
11 had forwarded the request to the election specialist (b) (6), (b) (7)(C)  
12 (b) (6), (b) (7)(C) (phonetic).

13 Q And had the substance of that email been communicated to  
14 you prior to the vote count?

15 A No.

16 Q Okay.

17 MR. MENDELSON: You can take away that exhibit and show  
18 the witness Employer Exhibit 66. Scroll down if you could.

19 Q BY MR. MENDELSON: Had you seen Employer Exhibit 66 prior  
20 to the vote count?

21 A No, I had not.

22 Q And were you aware of the information imparted in Employer  
23 66 prior to the vote count?

24 A No, I was not aware that Mr. Frumkin was communicating  
25 with (b) (6), (b) (7)(C) about ballots or the information here.

1 MR. MENDELSON: Okay. You can take that exhibit away.

2 Q BY MR. MENDELSON: Do you recall in connection with this  
3 case anything happening on Friday, April 1?

4 A That I was aware of on April 1?

5 A Yes.

6 Q I received an email on April 1st in the evening from  
7 (b) (6), (b) (7)(C) -- and I don't know if I'm saying (b) (6), (b) (7)(C) last name wrong,  
8 (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C), regarding an inadvertent fumble (b) (6), (b) (7)(C)  
9 had made in not mailing two ballots back on March 16th.

10 Q And in that email before we show it to you, do you  
11 remember whether or not (b) (6), (b) (7)(C) indicated anything further about  
12 that issue?

13 A That (b) (6), (b) (7)(C) was going to mail the ballots.

14 Q Okay. But (b) (6), (b) (7)(C) --

15 A (b) (6), (b) (7)(C) apologized for (b) (6), (b) (7)(C) inadvertent fumble.

16 MR. MENDELSON: Can you show the witness Employer 43?

17 Q BY MR. MENDELSON: Do you recognize this document?

18 A I do. It's the emails from (b) (6), (b) (7)(C) on April 1st  
19 saying -- about the inadvertent fumble, that (b) (6), (b) (7)(C) has corrected  
20 the error, sending out the ballots to those voters.

21 Q And did you understand how many voters (b) (6), (b) (7)(C) was rectifying  
22 the problem with respect to?

23 A (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C) had used the first voter list instead of  
24 the amended voter list, so I understood that there would be  
25 two. And (b) (6), (b) (7)(C) says which number (b) (6), (b) (7)(C) giving those individuals.

1 MR. MENDELSON: Okay. Move the admission of Employer 43.

2 HEARING OFFICER ZWEIGHAFT: Any objections?

3 MS. SCHNEIDER: No objection.

4 MR. IGLITZIN: No objection, from the Union.

5 HEARING OFFICER ZWEIGHAFT: Okay. 43 is received. I will  
6 note that I think that this email is also included in Employer  
7 Exhibit 61, but I have no problem taking it as a standalone  
8 email either. So 43 is received.

9 **(Employer Exhibit Number 43 Received into Evidence)**

10 Q BY MR. MENDELSON: Did you respond to Employer 43?

11 A Yes, I responded to that email.

12 Q Okay. And how did you respond?

13 A I sent everyone on the email a question of, when were the  
14 ballots mailed.

15 MR. MENDELSON: Okay. Can -- can the witness be shown  
16 Employer 44?

17 Q BY MR. MENDELSON: Do you recognize this document?

18 A Yes, I do. It's my April 4th email to (b) (6), (b) (7)(C), copying Mr.  
19 Frumkin, Mr. Iglitzin, Mr. Cervone, and (b) (6), (b) (7)(C) asking --  
20 and Ms. Carter is also on there, asking when the additional  
21 ballots had been mailed.

22 Q Okay. And what happened after that?

23 A (b) (6), (b) (7)(C) responded to me only and said that they had been  
24 mailed on the date of the email, April 1st.

25 MR. MENDELSON: And can you -- and Ms. Carter, show you

1 Employer Exhibit 45?

2 A Yes. That is the email that I'm -- to which I am  
3 referring.

4 MR. MENDELSON: Okay. So we'd like to move the admission  
5 at this time of Employer Exhibit 44 and 45.

6 HEARING OFFICER ZWEIGHAFT: Any objection?

7 MR. IGLITZIN: No objection.

8 MS. SCHNEIDER: No objection.

9 HEARING OFFICER ZWEIGHAFT: Okay. Employer 44 and 45 are  
10 received.

11 **(Employer Exhibit Numbers 44 and 45 Received into Evidence)**

12 MR. MENDELSON: Thank you.

13 Q BY MR. MENDELSON: Ms. Doud, after the vote count  
14 subsequent to April 8th, did you become aware of things that  
15 took place in connection with this election between Friday,  
16 April 1 and Monday, April 4th that you had been unaware of  
17 until after the vote count?

18 MR. IGLITZIN: And I will renew my objection based on an  
19 open-ended question. This -- this calls for answers that are  
20 not based on Ms. Doud's firsthand -- personal, firsthand  
21 knowledge.

22 HEARING OFFICER ZWEIGHAFT: I -- I understand that  
23 position, and under -- and I think we should establish, if it's  
24 not firsthand knowledge, how she knows it, just so that that's  
25 clear on the record. And I can give it the weight it's due at



1 that point, but I'll allow the answer.

2 MR. MENDELSON: Thank you.

3 A Yes. I became aware that after (b) (6), (b) (7)(C) sent the email  
4 to all of us on April 1st that Mr. Frumkin responded to that  
5 email, removing me, Ms. Carter, and the other Starbucks  
6 representative and indicating to (b) (6), (b) (7)(C) thank you for the  
7 email, but he had already been in communication with (b) (6), (b) (7)(C)  
8 of the Board to arrange for certain voters to vote in person.  
9 And he asked in that email how many have reached out and when  
10 will they be able to vote in person.

11 Q BY MR. MENDELSON: Okay. Anything else that you can  
12 recall learning after the vote count?

13 A I'm trying to remember if there's other things on April  
14 4th, but there were just other communications that I was not  
15 part of that occurred between Mr. Frumkin and the Board at  
16 Region 14.

17 Q Okay. So at this time, we'll show you Employer Exhibit  
18 61. And when it -- when it's shared, I suggest you read it  
19 from the bottom up. You read the first email there -- you'll  
20 see how many there are. Let's start with the bottom one. I'm  
21 just -- Ms. -- Ms. Doud, read it and tell Ms. Carter when  
22 you've completed and then just scroll upwards. Read them to  
23 yourself; I don't mean out loud.

24 A Okay. Thank you. Okay. You can scroll up. Right there.  
25 Yep. Yep. So this is -- this is also indicating that there

1 were conversations between Gabe and (b) (6), (b) (7) about the actual  
2 partners or employees coming into the subregional office next  
3 week to vote. And there are -- there is also information that  
4 I learned that on April 1st there was a phone call about (b) (6), (b) (7)  
5 calling Gabe -- Mr. Frumkin, excuse me, about -- that (b) (6), (b) (7) would  
6 be in the office the following week and that (b) (6), (b) (7) should have  
7 the partners call to make appointments to come in to vote.

8 Q Okay. Just look -- looking at the April 1 email from Mr.  
9 Frumkin to (b) (6), (b) (7)(C), Dmitri Iglitzin, and Mr. Cervone  
10 copying (b) (6), (b) (7)(C) at 7:22 p.m., was -- did you -- did you see this  
11 email prior to the vote count?

12 A I did not.

13 Q And the information imparted in it, did you know this  
14 information prior to the vote count?

15 A I did not.

16 Q No -- no one -- no one related anything in there to you  
17 prior to the vote count?

18 A No.

19 MR. MENDELSON: Okay. Scroll up to the next email,  
20 please. Please, read that one.

21 HEARING OFFICER ZWEIGHAFT: I just want to confirm just so  
22 it's clear on the record, we're still looking at Exhibit  
23 Employer 60- -- Employer Exhibit 61, which is already received  
24 in the record.

25 Q BY MR. MENDELSON: Okay. Please read -- please read the

1 initial email in the string from April 1 at 5:47 p.m.

2 A So (b) (6), (b) (7)(C) and Mr. Frumkin were communicating. (b) (6), (b) (7)(C)  
3 responding in this email about (b) (6), (b) (7)(C) handling the appointments  
4 for in-voter -- in-person voting. There are documents -- there  
5 were communications between (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), and  
6 (b) (6), (b) (7)(C) regarding creating duplicate ballots to mail out  
7 to certain voters and then making third ballot kits to have at  
8 the subregion office, so individuals could vote in person. And  
9 this email also says (b) (6), (b) (7)(C) had discussed -- (b) (6), (b) (7)(C) had  
10 discussed having the voters come in and making an appointment  
11 either through (b) (6), (b) (7)(C) or having Mr. Frumkin indirectly with (b) (6), (b) (7)(C)  
12 through Mr. Frumkin.

13 Q Okay. Were you aware? Had -- had you seen this email  
14 prior to April 8th and the vote count?

15 A I had not.

16 Q And the information imparted in it, did anyone make you  
17 aware of any of that information prior to the vote count?

18 A No.

19 MR. MENDELSON: Okay. You can take the document away.

20 At --

21 HEARING OFFICER ZWEIGHAFT: Ms. Doud, I want to -- I'm  
22 just going to ask a question. You just -- the testimony that  
23 you just offered about the kit that's not memorialized in the  
24 emails that are in evidence at this point I don't believe. Is  
25 that -- how do you know that information?

1 THE WITNESS: I learned that from the whistleblower.

2 HEARING OFFICER ZWEIGHAFT: Okay. Thank you.

3 Q BY MR. MENDELSON: Did you learn -- subse --

4 MR. MENDELSON: Strike that.

5 Q BY MR. MENDELSON: Subsequent to the vote count on April  
6 8th, did you learn anything further about which partners, if  
7 any, contacted the Region to make appointments to vote in  
8 person?

9 A After the election, I learned that prior to the election  
10 there were communications and appointments made for three  
11 partners to come in and vote in person, Alydia Claypool, Sage  
12 Quigley --

13 HEARING OFFICER ZWEIGHAFT: You know what, I don't want  
14 to --

15 THE WITNESS: Okay.

16 HEARING OFFICER ZWEIGHAFT: Do we need -- is there a  
17 particular reason we need those names or --

18 THE WITNESS: There was a third person.

19 HEARING OFFICER ZWEIGHAFT: Okay. So Alydia Claypool and  
20 Sage Quigley are named in the report. I don't -- unless --  
21 unless there's a -- you know, demonstrated reason, I don't want  
22 to include other names.

23 Q BY MR. MENDELSON: Okay. With respect to this third  
24 person, who, for the moment, we'll leave nameless, did you  
25 learn after April 8th, the mechanics by which that person made

1     their arrangements to come into the subregional office and vote  
2     in person?

3     A     Yes. After the election, I learned that a partner  
4     contacted Region 14, left a telephone message asking to vote in  
5     person, an appointment was made for that partner to vote in  
6     person, and that partner voted in person.

7           MR. IGLITZIN: I'm going to object. This is all hearsay.

8           HEARING OFFICER ZWEIGHAFT: Okay. Well --

9           MR. MENDELSON: So --

10          HEARING OFFICER ZWEIGHAFT: -- how do you know that?

11          THE WITNESS: I learned it from the whistleblower.

12          HEARING OFFICER ZWEIGHAFT: Okay. All right. So --

13          THE WITNESS: It's in all of the documents in Region 14's  
14     possession.

15          HEARING OFFICER ZWEIGHAFT: Okay. I --

16          MR. IGLITZIN: I'm going to object to that last comment,  
17     which is argument, not testimony.

18          HEARING OFFICER ZWEIGHAFT: Okay.

19          MR. MENDELSON: Mi -- since -- since Mr. Iglitzin's made  
20     that point, I'm going to ask the question of the witness.

21     Q     BY MR. MENDELSON: Ms. Doud, do you have an understanding  
22     from the whistleblower as to whether there are documents in  
23     Region 14's custody and -- and custody and control that support  
24     the facts to which you're testifying?

25          MR. IGLITZIN: That's an inappropriate question. We have

1 an offer of proof regarding to whistleblower. This is just  
2 trying to bootleg Ms. Doud's hearsay as to her conversations  
3 with this alleged leaker.

4 HEARING OFFICER ZWEIGHAFT: Okay. I'll -- I'll allow it.

5 THE WITNESS: There is no alleged leaker. There is a  
6 whistleblower --

7 HEARING OFFICER ZWEIGHAFT: Okay. I don't want to get  
8 into --

9 THE WITNESS: -- and the whistleblower --

10 MR. IGLITZIN: This is the problem with having an attorney  
11 testifying as a witness. She's now --

12 HEARING OFFICER ZWEIGHAFT: Okay.

13 MR. IGLITZIN: -- (indiscernible, simultaneous speech) --

14 Q BY MR. MENDELSON: Ms. Doud, just -- just answer the  
15 question I posed. Has the --

16 A Sure.

17 Q -- whistleblower indicated to you that there's  
18 documentation in support of the statements that the  
19 whistleblower has made to you?

20 A Yes. There --

21 MR. IGLITZIN: Objection. Leading.

22 HEARING OFFICER ZWEIGHAFT: Overruled.

23 A There are emails, phone logs, and memos to the file.

24 HEARING OFFICER ZWEIGHAFT: Okay.

25 Q BY MR. MENDELSON: Did there -- did there come a time

1 after (b) (6), (b) (7)(C) had replied to you indicating that these two  
2 ballots had been mailed out, that (b) (6), (b) (7)(C) had referenced, that you  
3 responded to (b) (6), (b) (7)(C)?

4 A Yes.

5 Q What did you indicate to (b) (6), (b) (7)(C)?

6 A I added everyone back into the email because (b) (6), (b) (7)(C) response  
7 was only to me, so I added Mr. Frumkin, Mr. Iglitzin, Ms.  
8 Carter, I believe (b) (6), (b) (7)(C), back on to the email, and I said  
9 that I had not been able to discuss this yet with the Union,  
10 but that I was worried that the date to return the ballots was  
11 April 6th. The vote count was April 8th. They were supposed  
12 to have had three weeks to -- to receive and return their  
13 ballots and I wanted to discuss moving the ballot count so that  
14 these partners could have the same amount of time to receive  
15 their ballots and vote, so they weren't disenfranchised.

16 MR. MENDELSON: Okay. And let's show the other witness  
17 Employer Exhibit 46.

18 Q BY MR. MENDELSON: Do you recognize the email?

19 A Yes. This is the email --

20 Q Okay.

21 A -- to which I was referring.

22 MR. MENDELSON: And I move the admission of Employer  
23 Exhibit 46.

24 HEARING OFFICER ZWEIGHAFT: Any objection?

25 MR. IGLITZIN: No objection.

1 A And I --

2 MS. SCHNEIDER: No objection.

3 A -- I note I also included the Regional Director on that  
4 email for 14.

5 HEARING OFFICER ZWEIGHAFT: Okay. Employer Exhibit 46 is  
6 received.

7 **(Employer Exhibit Number 46 Received into Evidence)**

8 MR. MENDELSON: Thank you.

9 Q BY MR. MENDELSON: What next happened, Ms. Doud?

10 A After I sent that email, Mr. Frumkin objected to  
11 postponing the ball -- the ballot count and the Region said  
12 that they would not move the ballot count, so I responded  
13 again, saying that I was -- I did not understand why they would  
14 not do -- move the ballot count to accommodate these voters to  
15 avoid disenfranchisement.

16 MR. MENDELSON: Okay. So let's show the witness Employer  
17 Exhibit 46.

18 HEARING OFFICER ZWEIGHAFT: We were just looking --

19 MS. CARTER: That's the one -- yeah.

20 MR. MENDELSON: Oh, I'm sorry. Employer Exhibit 47. My  
21 apologies. Even -- even when I have the right number, I don't  
22 have the right number.

23 A So Exhibit 47 is the email from Mr. Frumkin to myself and  
24 everyone on the email that I had sent saying that the Union did  
25 not agree to extend the ballot-return date that the election



1 had generated a substantial amount of engagement.

2 MR. IGLITZIN: I'm going to object to this witness simply  
3 reading a document that is an exhibit.

4 HEARING OFFICER ZWEIGHAFT: Yeah. I -- I -- if you're  
5 offering it, I don't think we need to --

6 MR. MENDELSON: That --

7 HEARING OFFICER ZWEIGHAFT: -- read it.

8 MR. MENDELSON: -- that's -- that's fine.

9 A That's the email.

10 MR. MENDELSON: We offer this -- we offer this exhibit  
11 into evidence.

12 HEARING OFFICER ZWEIGHAFT: Okay.

13 MR. IGLITZIN: No objection.

14 MS. SCHNEIDER: No objection.

15 HEARING OFFICER ZWEIGHAFT: Okay. Exhibit 47 is  
16 received -- Employer 47.

17 **(Employer Exhibit Number 47 Received into Evidence)**

18 MR. MENDELSON: Thank you. And can you show the witness  
19 Employer Exhibit 48?

20 Q BY MR. MENDELSON: Do you recognize the document, Ms.  
21 Doud?

22 A Yes, I do. This is the email from (b) (6), (b) (7)(C) to myself,  
23 Mr. Frumkin, everyone else on that -- that email, although, it  
24 looks like the Regional Director has been taken off and it's  
25 the email to which I was referring.

1 MR. MENDELSON: Move the admission of Employer Exhibit 48.

2 MR. IGLITZIN: No objection.

3 MS. SCHNEIDER: No objection.

4 HEARING OFFICER ZWEIGHAFT: Okay. Can you just scroll  
5 down because it looks like there is -- is there something  
6 from -- oh, I see. Okay. Okay. So there is -- so it looks  
7 like -- all right. So this is a thread that goes back and  
8 starts with the initial email about the inadvertent fumble.  
9 Okay. That's -- I just wanted to see what the -- everything  
10 that was in here.

11 MR. MENDELSON: Thank you. And then --

12 HEARING OFFICER ZWEIGHAFT: Okay. So -- I'm sorry. I  
13 don't guess I -- so Employer 48 is received.

14 **(Employer Exhibit Number 48 Received into Evidence)**

15 MR. MENDELSON: And Ms. Carter, can you show the witness  
16 Employer Exhibit 49?

17 Q BY MR. MENDELSON: You recognize the document?

18 A Yes, I do. Exhibit 49 is the email to which I was  
19 referring, my response to both (b) (6), (b) (7)(C) and Mr. Frumkin's  
20 emails about going forward on April 8th and expressing my  
21 concern again about the disenfranchisement of the voters and  
22 postponing it to ensure election integrity.

23 MR. MENDELSON: Okay. Move the admission of this  
24 document.

25 MR. IGLITZIN: No objection.

1 MS. SCHNEIDER: No objection.

2 HEARING OFFICER ZWEIGHAFT: Can I just ask and I'm not  
3 sure if it said on other emails, but there are a number of  
4 attachments that just -- or look like images, are those just --  
5 do you know, are those --

6 THE WITNESS: There weren't -- I don't believe that there  
7 were attachments. I think sometimes, depending on how these  
8 get converted for PDFs, that the images from signature blocks  
9 and they look like attachments.

10 HEARING OFFICER ZWEIGHAFT: I -- I -- I think -- okay.  
11 That wou -- that would be my understanding, I just wanted to  
12 ask. So you're not aware of any substantive attachments to  
13 this email?

14 THE WITNESS: No. And especially, it looks like it  
15 says -- and I'm sorry, I am moving into my screen, but it looks  
16 like it says dot-P&G, so I think that's (audio interference) --

17 HEARING OFFICER ZWEIGHAFT: All right. Okay.

18 THE WITNESS: -- images. Yeah.

19 HEARING OFFICER ZWEIGHAFT: Okay. All right. I just  
20 wanted to clarify that. Okay. Yes. 49 is received -- Employer  
21 Exhibit 49 is received.

22 **(Employer Exhibit Number 49 Received into Evidence)**

23 Q BY MR. MENDELSON: Okay. Ms. Doud, on April 8th, do you  
24 remember about when the vote count started?

25 A I never received a response to that email on the vote



1 count. I'm going to try to remember which time zone because it  
2 was Central. I believe it started at 2 Central on April 8th.

3 Q Okay. And do you remember about when it concluded?

4 A I believe it took about two hours.

5 Q Okay. And who handled the actual counting of the ballots?

6 A The actual person handling the -- the -- handling of the  
7 ballots at the ballot count was (b) (6), (b) (7)(C) .

8 Q And -- and how many Board representatives were present for  
9 the ballot count?

10 A Four.

11 Q And who are they?

12 A (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) -- (b) (6), (b) (7)(C) was there. (b) (6), (b) (7)(C) was  
13 there. (b) (6), (b) (7)(C) was there and (b) (6), (b) (7)(C) , I may  
14 mispronounce (b) (6), (b) (7)(C) last name, (b) (6), (b) (7)(C) .

15 Q Okay. And by -- by the way, I should have asked, what --  
16 what kind of ballot count was it?

17 MR. IGLITZIN: Objection.

18 Q BY MR. MENDELSON: What were the mechanics of it?

19 A It was a virt -- it was a virtual ballot -- ballot count  
20 for the mail ballots.

21 Q Okay. How many Starbucks election vote counts have you  
22 handled?

23 A Over 20.

24 Q And have any of them involved approximately 20 eligible  
25 voters?

1 A Most of the stores have slightly under to -- under 20 to  
2 around 30, so most of them.

3 Q Okay.

4 MR. IGLITZIN: I'm going to object to this line of  
5 questioning. I think the theory of this line of questioning  
6 from what we heard before is to try to impugn that some  
7 irregular -- irregularity happened here because of the number  
8 of the NLRB personnel who are on the Zoom call. And that's not  
9 supported by any evidence, by any foundation that's meaningful.  
10 It's purely a scurrilous argument and it's not appropriate.

11 MR. MENDELSON: But we're -- we're creating the  
12 foundation. That's the purpose of the questions.

13 MR. IGLITZIN: This witness' testimony as to whatever  
14 number of arguments she may have done on Zoom is opening up a  
15 completely collateral thing. I'd suspect my -- personally,  
16 I've done more of these R hearings around the country for  
17 Starbucks workers who are Unionizing and -- you know, just  
18 start bringing people in, saying, well, at this -- at this R  
19 hearing on Zoom, this number of -- you know, NLRB hearing --  
20 personnel attended. These cases have gathered a lot of  
21 interest within the NLRB as well as outside for any number of  
22 reasons. I just think on its face, the suggestion that because  
23 there were four Board agents or -- or NLRB personnel watching  
24 that -- a Zoom hearing, it's just an absurd argument and should  
25 not be counted.

1 MR. MENDELSON: Well, if -- if Mr. Iglitzin --

2 HEARING OFFICER ZWEIGHAFT: Well, I -- I agree that the  
3 releva -- I -- I agree that the relevance of what happens in  
4 other counts is not really before me, so let's go -- continue  
5 with what happened to this count.

6 Q BY MR. MENDELSON: When -- when the -- why don't you walk  
7 us through, to the best of your recollection, how the count  
8 proceeded?

9 A We logged in -- I logged in along with -- there may have  
10 been 70 people on this count, watching. We all went into one  
11 room and then we went into -- myself, Ms. Carter, (b) (6), (b) (7)(C),  
12 (b) (6), (b) (7)(C), Gabe Frumkin, I believe the observer was (b) (6), (b) (7)(C)  
13 (b) (6), (b) (7)(C). I apologize if I'm saying (b) (6), (b) (7)(C) last name incorrectly.

14 HEARING OFFICER ZWEIGHAFT: The Union's observer?

15 THE WITNESS: The Union's observer, yes. And Caroline  
16 Page, another attorney from our office, and our observer, Sara  
17 Jenkins. There may have been others, the -- the Board agents  
18 were in there as well.

19 Q BY MR. MENDELSON: Okay. And you -- do you remember  
20 whether you stated something at the outset of the vote count?

21 A Yeah. So we went into the breakout room to view the  
22 ballots and do the challenges. I started out by putting on the  
23 record that the Employer objected to this ballot count  
24 proceeding because of what had transpired, that they -- that  
25 there had been an issue with the ballots being mailed timely

1 and so we objected to moving forward. (b) (6), (b) (7)(C) said that (b) (6), (b) (7)(C)  
2 noted our objection, there was no comment from the Union, and  
3 we moved forward with the ballot count.

4 Q Okay. And with respect to -- well, let -- let me try  
5 it this way. I -- I want to try to be efficient and not  
6 generate objections. So let me try it this way. And then --  
7 and then we'll follow up if necessary. Do you recall in -- in  
8 specific instances that the Employer had a concern about  
9 ballots that were opened at this vote count.

10 MR. IGLITZIN: So unless counsel intends to open this  
11 questioning into attorney-client privileged communications, I  
12 don't think this witness can appropriately talk about the  
13 Employer's concerns. This witness should talk about what she  
14 saw, what she said, what other witnesses, Board agents, Union  
15 representatives said, but her -- this question is -- is not  
16 appropriate.

17 MR. MENDELSON: If -- if I was in --

18 HEARING OFFICER ZWEIGHAFT: I don't think the -- I  
19 actually don't think the -- the questions that clear, so I'm  
20 going to ask you to restate it anyway.

21 MR. MENDELSON: Okay.

22 HEARING OFFICER ZWEIGHAFT: I'm -- so --

23 MR. MENDELSON: If -- if I was in inept in my formulation  
24 of it, I'm sorry. I'll -- I'll try it a different way.

25 Q BY MR. MENDELSON: What did you or whoever else was

1 speaking -- well, who -- who else besides you, if anyone, spoke  
2 at the vote count on behalf of the Employer?

3 A Sure. I spoke on behalf of the Employer. I handled the  
4 ballot count for --

5 Q Okay.

6 A -- the Employer. Mr. Frumkin handled the ballot count for  
7 the Union.

8 Q Okay. And did you raise questions, whether by challenge  
9 or otherwise, about certain ballots? And if -- if so can you  
10 tell us which ballots off the top of your head you recall at  
11 this time?

12 A I did raise challenges to ballots, not sure how you want  
13 me to do this without saying people's names, but I challenged  
14 certain ballots because there was no postmark or because there  
15 was a comment. One of the ballots, there was a comment from  
16 (b) (6), (b) (7)(C) that (b) (6), (b) (7)(C) didn't know what had happened to this  
17 ballot, where it had come from, it was just there that morning.

18 HEARING OFFICER ZWEIGHAFT: Okay. I'm -- I'm just going  
19 to say, I think with regard to challenges, those are -- I don't  
20 know if they're part of the record because we don't -- I don't  
21 think we have the challenges letter, but I think that if you  
22 need to identify a specific challenge that you made, you can do  
23 that. And there are certain employees that have been listed in  
24 the report on objection. So you know, to the extent that it  
25 goes to objections -- you know, allegations in that report, I



1 will allow you to -- you know, identify those employees.

2 A So Calvin Culey's ballot is the ballot that appeared in  
3 the subregion office the morning of the ballot count that (b) (6), (b) (7)(C)  
4 (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) wasn't sure where it came from or how it got  
5 there. There were --

6 HEARING OFFICER ZWEIGHAFT: So what hap -- so just --  
7 let's be a little -- can -- if we can be as specific as we can  
8 and what -- so what happened with that ballot? Like what --  
9 what do you remember about that ballot?

10 THE WITNESS: Right. So when we -- and I don't remember  
11 what number --

12 HEARING OFFICER ZWEIGHAFT: That's okay. But it's a --  
13 it's a --

14 THE WITNESS: -- was on the list, but when it came to that  
15 ballot, (b) (6), (b) (7)(C) -- (b) (6), (b) (7)(C) made an off-the-cuff comment about it,  
16 that (b) (6), (b) (7)(C) didn't know where it had come from, that it had  
17 appeared that morning.

18 MR. IGLITZIN: I'm going to object to the characterization  
19 of the comment came off-the-cuff. The testimony should be what  
20 (b) (6), (b) (7)(C) said.

21 HEARING OFFICER ZWEIGHAFT: Okay. Overruled. Go ahead.

22 THE WITNESS: So based on that comment and the fact that  
23 there was no postmark on there, I objected to the ballot or  
24 challenged a ballot, I should say.

25 HEARING OFFICER ZWEIGHAFT: Okay.

1 Q BY MR. MENDELSON: Do you remember any other ballots that  
2 engendered either a challenge or other -- objection by -- by  
3 you on behalf of the Company?

4 A Yes. Sage Quigley's and Alydia Claypool's were  
5 challenged. There were some that were challenged because the  
6 partners were no longer employed. It was the (b) (6), (b) (7)(C)  
7 and I cannot remember (b) (6), (b) (7)(C) name, but those two were  
8 challenged because they were no longer -- they had resigned  
9 their employment.

10 Q Can I go back -- can I go back to Claypool and Quigley,  
11 you said that you challenged them. Do you remember why you  
12 challenged them?

13 A They had no postmarks.

14 Q Okay. That -- that's what I was after. In -- in both  
15 their instances?

16 A Yes.

17 Q Okay.

18 A I'm just trying to --

19 Q And --

20 A -- keep track of who I've gone through.

21 Q Let me just -- let me just attain on Quigley and Claypool.  
22 Do you remember whether there was any kind of colloquy between  
23 you and anyone else regarding the absence of postmarks on one  
24 or both of those ballots?

25 A Yes. When I -- when I challenged on that basis, (b) (6), (b) (7)(C)

1 (b) (6), (b) (7)(C) said that they -- that per Board proto -- protocol,  
2 special -- they had made arrangements to allow those voters to  
3 vote. And I said to (b) (6), (b) (7)(C), I don't know what Board protocol (b) (6), (b) (7)(C)  
4 was referring to or what arrangements had be made. And because  
5 of that and because there were no postmarks, I was challenging  
6 the ballots.

7 Q Did -- did (b) (6), (b) (7)(C) respond to your inquiry as to what  
8 (b) (6), (b) (7)(C) meant by protocol or arrangements?

9 A No, (b) (6), (b) (7)(C) said (b) (6), (b) (7)(C) want -- (b) (6), (b) (7)(C) just wanted to make that  
10 clear.

11 Q Okay. Okay. So we've covered Quigley, Ms. Claypool, Cal  
12 Culey, anyone else come to mind?

13 A I believe that I challenged (b) (6), (b) (7)(C) ballot as  
14 well for no -- for no postmark. And then I think there's one  
15 more that I'm trying to remember.

16 Q When you challenged (b) (6), (b) (7)(C), did anyone else involved in  
17 the ballot count provide any explanation?

18 A I believe it was the same, the Board protocol.

19 Q Okay. Did you -- I -- I understand I covered this in a  
20 different respect, but I'm going to ask again in a different  
21 way. Did you know what was meant by Board protocol?

22 A No. And I said that to (b) (6), (b) (7)(C). I didn't know what (b) (6), (b) (7)(C) meant  
23 by Board protocol or the arrangements that had been made. And  
24 because of that and because of the lack of the postmark, I was  
25 challenging.

1 Q Okay.

2 A There's one more, and I cannot, right now, as I sit here,  
3 remember the name.

4 Q Okay.

5 HEARING OFFICER ZWEIGHAFT: How many -- how many  
6 ballots -- if you remember, how many ballots were not  
7 postmarked?

8 THE WITNESS: Quigley -- Sage Quigley, Alydia Claypool,  
9 (b) (6), (b) (7)(C) --

10 MR. IGLITZIN: I -- I -- it appears the witness is reading  
11 from notes or a document of some sort --

12 THE WITNESS: No, I'm -- I'm counting on my hand. I have  
13 nothing.

14 MR. IGLITZIN: Okay.

15 THE WITNESS: Sorry. I was thinking.

16 HEARING OFFICER ZWEIGHAFT: Yeah, no, I -- yeah. I didn't  
17 think you were reading. Go ahead.

18 THE WITNESS: (b) (6), (b) (7)(C) --

19 HEARING OFFICER ZWEIGHAFT: So it's --

20 THE WITNESS: -- (b) (6), (b) (7)(C) did not have a postmark. I've  
21 lost count.

22 HEARING OFFICER ZWEIGHAFT: Okay.

23 THE WITNESS: At least five.

24 HEARING OFFICER ZWEIGHAFT: At least five. Okay.

25 Q BY MR. MENDELSON: With -- with respect to (b) (6), (b) (7)(C), do

1     you have a further understanding as to what happened with that  
2     ballot?

3     A     No. It did not have a postmark. I don't know how it got  
4     there.

5           MR. MENDELSON: Okay. And -- and just as a brief  
6     diversion, but not to go off the examination, Madam Hearing  
7     Officer, we do want to come back to (b) (6), (b) (7)(C) given something  
8     that was said yesterday, but I don't want to do that now.  
9     We'll -- we'll come back to it.

10          HEARING OFFICER ZWEIGHAFT: Okay.

11     Q     BY MR. MENDELSON: After -- after the challenge process  
12     concluded, what then happened, Ms. Doud?

13     A     So there were 14 votes cast, there were 7 challenges. We  
14     sat there as the envelopes were opened and put into a cardboard  
15     ulta box (phonetic throughout). And then we were -- the -- the  
16     yello -- the inside envelope. The challenged -- seven  
17     challenged ballots were set aside.

18           We were then moved into the big room with everyone. So  
19     there were seven ballots in the ulta box and seven challenged  
20     ballots. When we got back into the room with everyone, there  
21     were six ballots counted. (b) (6), (b) (7)(C) -- (b) (6), (b) (7)(C) took the ballots  
22     out of the cardboard ulta box, put them on (b) (6), (b) (7)(C) desk, took the  
23     ulta box, put it on the floor out of the view of the camera,  
24     and then proceeded to count the ballots. There were only six.  
25     So then (b) (6), (b) (7)(C) proceeded to try and find the seventh ballot.

1 (b) (6), (b) (7)(C) found the seventh ballot under a flap of the cardboard box  
2 that had been out of view.

3 Q Okay.

4 A Counted -- you want me to keep going?

5 Q Yeah. Go ahead. I'm sorry. I thought you were pausing.  
6 Go ahead.

7 A (b) (6), (b) (7)(C) then counted that ballot. So there were seven votes  
8 counted. And then (b) (6), (b) (7)(C) started handling the challenged ballots,  
9 making the list. And then (b) (6), (b) (7)(C) took the challenged -- the seven  
10 challenged ballots out of the room outside of the view of  
11 everyone for about 15 to 20 minutes.

12 Then (b) (6), (b) (7)(C) came back, finished with the challenges, wrote up  
13 the tally. I objected to signing the tally and (b) (6), (b) (7)(C) placed my  
14 name on the tally anyway over my objection.

15 Q And when (b) (6), (b) (7)(C) left the room at the Zoom, where were  
16 the challenged ballots?

17 A (b) (6), (b) (7)(C) took them with (b) (6), (b) (7)(C).

18 Q Okay. And forgive me. I -- maybe I'm misunderstanding.

19 And (b) (6), (b) (7)(C) left the room, where were the tallied ballots?

20 A In the room.

21 Q Okay.

22 HEARING OFFICER ZWEIGHAFT: Were they in view of the Zoom  
23 camera?

24 A I don't believe they were, because what was in view of the  
25 camera was the list of the names of the challenged voters.

1 Q BY MR. MENDELSON: And -- and how many -- how many  
2 ballots -- I think you've already testified to this -- okay.

3 MR. MENDELSON: I don't know if Ms. Carter has it marked.  
4 I don't think initially I had marked it, but I think it may  
5 have -- do you have the ballot tally, Ms. Carter, the revised  
6 tally of ballots?

7 MS. CARTER: I think -- I think I have both. Which --  
8 which one are you asking for?

9 MR. MENDELSON: Revised -- revised tally is the one that I  
10 now have.

11 MS. CARTER: Okay.

12 MR. MENDELSON: And can I -- I don't know what number it  
13 is; you'll have to tell us.

14 MS. CARTER: It's part of -- it's an attachment to  
15 Employer Exhibit 79. I -- I don't believe I've emailed this  
16 yet, but I have it. I can screenshare it and then circulate it  
17 to the parties.

18 HEARING OFFICER ZWEIGHAFT: That's fine.

19 THE WITNESS: Thank you. Sorry.

20 MS. CARTER: So it's an attachment to this, so I'm going  
21 to scroll down.

22 MR. MENDELSON: Okay.

23 Q BY MR. MENDELSON: Do you recognize this document, Ms.  
24 Doud?

25 THE WITNESS: Can you scroll all the way down, please, Ms.

1 Carter?

2 A This is the revised tally of ballots after -- well, this  
3 is the revised tally of ballots.

4 MR. MENDELSON: Okay. It was -- it was my purpose, Madam  
5 Hearing Officer, to move this into evidence. I don't know  
6 whether we -- we -- we apparently have it attached to the -- a  
7 version of the challenged document which you've already made as  
8 Board Exhibit 4 and I -- I guess, an email of yours. I don't  
9 have a preference one way or the other as to how we admit it or  
10 seek to admit it.

11 HEARING OFFICER ZWEIGHAFT: I mean, this is -- if we put  
12 this in, we don't need Board Exhibit 4 because it would be  
13 redundant. I'm fine with this if there's no objection to  
14 Employer 79?

15 MR. IGLITZIN: No objection from the Uni -- well, how --  
16 has -- have we submitted the prior tallied ballots?

17 MR. MENDELSON: We -- we have -- we haven't. I have no  
18 objection to doing that if you'd like to do that.

19 MR. IGLITZIN: I think for the sake of completeness, we  
20 should do that.

21 MR. MENDELSON: Okay. Ms. Carter, do we have that?

22 MS. CARTER: I don't know if I -- I don't think I have it  
23 marked yet, but I can prepare it and it would be marked as --

24 HEARING OFFICER ZWEIGHAFT: It will say that the revised  
25 tally includes the prior tally?



1 MR. MENDELSON: Oh, it has the original tally column,  
2 that's true.

3 HEARING OFFICER ZWEIGHAFT: Like there -- I don't know  
4 what information the --

5 MR. IGLITZIN: That's fi -- that's fine then. Thank you.

6 HEARING OFFICER ZWEIGHAFT: All right.

7 MR. MENDELSON: So we -- we move 79 and I -- I guess,  
8 we're suggesting, Madam Hearing Officer, that that means Board  
9 Exhibit 4 is withdrawn?

10 HEARING OFFICER ZWEIGHAFT: Well, we haven't even done  
11 anything with Board Exhibit 4 on the record.

12 MR. MENDELSON: Oh.

13 HEARING OFFICER ZWEIGHAFT: I sent that out to everybody  
14 this morning, so we just won't use Board Exhibit 4.

15 MR. MENDELSON: Okay.

16 HEARING OFFICER ZWEIGHAFT: Any objection, Ms. Schneider,  
17 to Employer Exhibit 79?

18 MS. SCHNEIDER: No objection.

19 HEARING OFFICER ZWEIGHAFT: Okay. Employer Exhibit 79 is  
20 received.

21 **(Employer Exhibit Number 79 Received into Evidence)**

22 HEARING OFFICER ZWEIGHAFT: And I think, Ms. Carter, you  
23 said you have to circulate that everybody, so you can do that  
24 at a break.

25 MS. CARTER: Thank you.

1           HEARING OFFICER ZWEIGHAFT: And I will just note, I think  
2           that the -- it looks like the challenges are also included in  
3           that document, so we'll have a list of the names in that  
4           document.

5           MR. MENDELSON: Oh, okay. Okay.

6           MS. SCHNEIDER: I'm sorry. Can you state again which  
7           number that just was?

8           HEARING OFFICER ZWEIGHAFT: Employer 79.

9           MS. SCHNEIDER: Thank you.

10          MR. MENDELSON: Just -- just one moment.

11          HEARING OFFICER ZWEIGHAFT: Um-hum.

12          MS. CARTER: If I may, Madam Hearing Officer, we've also  
13          marked Employer Exhibit 50, which was -- been uncirculated,  
14          which is the original tally. So it is in Employer's exhibits  
15          as well, it just hasn't been introduced yet.

16          HEARING OFFICER ZWEIGHAFT: Okay.

17          MR. MENDELSON: I'm not far from being done with Ms. Doud.  
18          I think it would be sensible to take -- obviously, I can't talk  
19          for Ms. Doud, it's Ms. Carter and I, who will talk, can we  
20          take -- I -- I -- I was going to say five minutes, so maybe ten  
21          minutes. I just want to run something by her. And again, I  
22          think we're virtually done with Ms. Doud.

23          HEARING OFFICER ZWEIGHAFT: Okay. Can I also -- I have a  
24          few questions, so let me ask my questions and then you take  
25          your break. And then -- you know, I'll -- I'll also give Mr.

1 Iglitzin some time before cross-examination, so he has some  
2 time to prepare, but.

3 I just have a couple of questions about the count. So you  
4 went in -- so initially there were a lot of people on the Zoom.  
5 It sounds like not everybody was a party. There was a breakout  
6 room that did include just the parties and their observers to  
7 go through the challenges so that wasn't done in a big public  
8 room; is that correct?

9 THE WITNESS: That's --

10 HEARING OFFICER ZWEIGHAFT: Am I --

11 THE WITNESS: -- correct. And there -- with -- when we  
12 were put into the breakout room, the observer for the Union was  
13 actually in a public place with lots of people behind (b) (6), (b) (7)(C), so  
14 they asked (b) (6), (b) (7)(C) to move.

15 HEARING OFFICER ZWEIGHAFT: Okay. So how -- so you said  
16 there were four -- and originally when you went into Zoom,  
17 there were four Board agents. How many Board agents were there  
18 in the breakout room?

19 THE WITNESS: I believe all four went into the breakout  
20 room.

21 HEARING OFFICER ZWEIGHAFT: Okay. And were all four  
22 present when you went back into the large room for the count?

23 THE WITNESS: Yes.

24 HEARING OFFICER ZWEIGHAFT: Okay. And when -- Ms.  
25 Schneider, do you know how to pronounce (b) (6), (b) (7)(C) last name, is

1     it (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) ?

2             THE WITNESS: I'm sorry.

3             MS. SCHNEIDER: That's okay. It's (b) (6), (b) (7)(C).

4             HEARING OFFICER ZWEIGHAFT: (b) (6), (b) (7)(C), okay.

5             THE WITNESS: I apologize.

6             HEARING OFFICER ZWEIGHAFT: When (b) (6), (b) (7)(C) went out of the  
7 room with the challenged ballots, did (b) (6), (b) (7)(C) indicate why (b) (6), (b) (7)(C) was  
8 going out of the room?

9             THE WITNESS: To make photocopies of them.

10            HEARING OFFICER ZWEIGHAFT: Okay. Of the envelopes?

11            THE WITNESS: Yeah, correct.

12            HEARING OFFICER ZWEIGHAFT: Okay. Did any of the other  
13 Board agents remain in the main room?

14            THE WITNESS: (b) (6), (b) (7)(C) remained in the Board -- in the  
15 room. Those were the two active -- those were the two active  
16 (b) (6), (b) (7)(C). And so I'm not sure if (b) (6), (b) (7)(C) -- I  
17 believe (b) (6), (b) (7)(C) stayed for the whole time. And I believe  
18 (b) (6), (b) (7)(C) and -- probably mispronouncing the last part,  
19 (b) (6), (b) (7)(C) stayed as well.

20            MS. SCHNEIDER: That's the corr --

21            HEARING OFFICER ZWEIGHAFT: Is that wrong?

22            MS. SCHNEIDER: That's the correct pronunciation.

23            HEARING OFFICER ZWEIGHAFT: Okay. Okay. So when -- when  
24 (b) (6), (b) (7)(C) went out of the room, the other Board agents remained  
25 in the room with the ballots; is that correct?

1 THE WITNESS: Yep. Yes. (b) (6), (b) (7)(C) asked -- there was an  
2 exchange between (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) about going and  
3 making copies of the challenge -- of the challenge ballots.

4 HEARING OFFICER ZWEIGHAFT: Okay.

5 THE WITNESS: So (b) (6), (b) (7)(C) was still in the room at the time and  
6 remained.

7 HEARING OFFICER ZWEIGHAFT: Okay. And so when you -- and  
8 I just want to -- I just want to make sure I'm following this  
9 correctly. When you were in the breakout room, and (b) (6), (b) (7)(C) put  
10 this -- there were seven ballots that were going to be counted.  
11 Were it -- was -- were they still in the signed envelopes or  
12 were -- or had they -- had they been taken out of the signed  
13 envelopes to put them in the box? Do -- am I --

14 THE WITNESS: The --

15 HEARING OFFICER ZWEIGHAFT: -- is my question clear to  
16 you?

17 THE WITNESS: I think so. I think I understand. (b) (6), (b) (7)(C) had  
18 opened them up and put the yellow envelopes in the ultra box and  
19 kind of shook them around.

20 HEARING OFFICER ZWEIGHAFT: Okay. And in this case,  
21 was -- was -- was a yellow envelope the one that did not have  
22 the signature or that was --

23 THE WITNESS: Oh, I'm sorry. Yes. Yes. It was the  
24 nonsigned inner envelope.

25 HEARING OFFICER ZWEIGHAFT: Okay. So they were -- so

1       there were seven envelopes that had no signatures, were taken  
2       out of the signed -- that were going to be counted, those were  
3       mixed -- those were comingled in the ultra box?

4               THE WITNESS:   Yes.

5               HEARING OFFICER ZWEIGHAFT:   Okay.   And then there was  
6       one -- so when (b) (6), (b) (7) took -- and then (b) (6), (b) (7) counted out of that?  
7       (b) (6), (b) (7) opened those and counted and there was one that was out of  
8       view, and (b) (6), (b) (7) found it after the -- afterwards in -- still in  
9       that box?

10              THE WITNESS:   Yep.   So when we went back into the large  
11       room --

12              HEARING OFFICER ZWEIGHAFT:   Um-hum.   Right.

13              THE WITNESS:   -- when (b) (6), (b) (7) took the ballots out of the  
14       cardboard box, set the cardboard box on the floor out of view,  
15       and then started counting the ballots, and there were only six.  
16       So when (b) (6), (b) (7) realized there were only six, (b) (6), (b) (7) started looking  
17       for the seventh one.

18              HEARING OFFICER ZWEIGHAFT:   And it was still in the box?

19              THE WITNESS:   It was under a flap inside the box that was  
20       on the floor.

21              HEARING OFFICER ZWEIGHAFT:   Okay.   And -- okay.   I think  
22       that -- I think that clarifies my question.   So you know,  
23       I'll --

24              THE WITNESS:   Yes.

25              HEARING OFFICER ZWEIGHAFT:   -- allow -- I just thought it

1 would be helpful to have that -- to have my -- the questions  
2 that I wanted to ask them at this point so that Mr. Mendelson  
3 and Mr. Iglitzin can take those into account when they're --

4 THE WITNESS: And I -- and I do recall, I believe, the  
5 seventh one that I was not remembering is (b) (6), (b) (7)(C), who  
6 is no longer employed and was challenged, but.

7 HEARING OFFICER ZWEIGHAFT: Oh, okay. Challenged. Okay.  
8 Thank you. All right. Okay.

9 Mr. Mendelson, ten minutes?

10 MR. MENDELSON: Yes. Thank you.

11 HEARING OFFICER ZWEIGHAFT: Okay. So off the record.

12 (Off the record at 1:27 p.m.)

13 HEARING OFFICER ZWEIGHAFT: Mr. Mendelson, you have any  
14 further questions?

15 MR. MENDELSON: Yes, just a few.

16 HEARING OFFICER ZWEIGHAFT: Okay.

17 **RESUMED DIRECT EXAMINATION**

18 Q BY MR. MENDELSON: Ms. Doud, I think you already made  
19 reference to the fact that you had expressed a -- a  
20 disagreement with something that (b) (6), (b) (7)(C) had done in terms of  
21 the --

22 MR. MENDELSON: Is everyone hearing me okay? I'm hearing  
23 an echo. I'll -- I'll continue.

24 HEARING OFFICER ZWEIGHAFT: Yes. It's okay.

25 Q BY MR. MENDELSON: You had expre -- you had expressed some

1 dissatisfaction with (b) (6), (b) (7)(C) in terms of how (b) (6), (b) (7)(C) concluded  
2 the ballot count. Could you just restate that?

3 A Yes. I had said that I did not want my name put on the  
4 tally of ballots, and over my objection, (b) (6), (b) (7)(C) put the name on  
5 there.

6 MR. MENDELSON: Okay. And Ms. -- Ms. Carter will correct  
7 me if I'm wrong, I think we want to show you two exhibits. One  
8 is Employer -- am I correct, Ms. Carter, it's 78?

9 MS. CARTER: Employer Exhibit 50 and 51.

10 MR. MENDELSON: Oh, okay. That's what I have. I thought  
11 I had the wrong -- okay. Like I said, when I have the right  
12 numbers, I still don't have the right numbers. I don't -- I  
13 don't even know that we need 50 because I think it's attached  
14 to 51. Tell me if I'm correct about that.

15 MS. CARTER: We --

16 MR. MENDELSON: We detached them, so --

17 MS. CARTER: 50 has an attachment. 51 is a different --

18 MR. MENDELSON: Okay. I'm sorry.

19 MS. CARTER: -- email.

20 MR. MENDELSON: Okay. So why don't you -- why don't you  
21 show that in the sequence you think appropriate either way.  
22 I'm gathering the first one we're going to show is Employer 50?

23 MS. CARTER: Yes.

24 MR. MENDELSON: So this -- this actually solves Mr.  
25 Iglitzin's request from before.



1 Q BY MR. MENDELSON: Do you recognize this, Ms. Doud?

2 A Yes. It's the tal -- the original tally of ballots --

3 Q Okay. And --

4 A -- from April 8th.

5 MR. MENDELSON: And before we do anything more, why don't  
6 you show the witness Employer 51?

7 HEARING OFFICER ZWEIGHAFT: So Mr. Mendelson, I'm going to  
8 note that there was an objection about the signing of the  
9 tally, and it was overruled. It's not before me, so I'm not  
10 sure where we're going with this.

11 MR. MENDELSON: Oh, I -- I -- I -- forgive me. I had not  
12 recognized that.

13 HEARING OFFICER ZWEIGHAFT: Yeah. This -- this objection,  
14 I believe, was overruled in the Regional Director's report.

15 MR. MENDELSON: Well, it -- so then I recognize that --  
16 that I'm not -- not on strong -- strong craft here. I --  
17 that -- that had eluded me.

18 HEARING OFFICER ZWEIGHAFT: Is this -- this is 17?  
19 Objection 17, correct?

20 MR. MENDELSON: I'm not sure, but I'm looking through that  
21 document. Let -- scroll --

22 MS. CARTER: If -- if I may, Madam Hearing officer, I  
23 think it's relevant to show the universe of communications  
24 between Region 14 and the representatives.

25 HEARING OFFICER ZWEIGHAFT: I mean, if you -- if you want

1 to articulate it for a different reason, that's fine. I just  
2 want to be clear that I'm not going to consider anything about  
3 whether or not the tally was signed by Ms. Doud as an  
4 objection.

5 MR. MENDELSON: Yeah, we're looking -- we were not  
6 offering it for that purpose. Ms. Carter --

7 HEARING OFFICER ZWEIGHAFT: Okay.

8 MR. MENDELSON: -- has been articulate about our purpose,  
9 so I --

10 HEARING OFFICER ZWEIGHAFT: Okay.

11 MR. MENDELSON: -- I would a little bit more muddled. So  
12 that's the limited use of it.

13 HEARING OFFICER ZWEIGHAFT: Okay. I mean, it -- that's  
14 fine. I don't -- I don't have a problem with taking it in, I  
15 just wanted to be clear that I'm not going to consider it as  
16 an -- as objectionable.

17 MR. MENDELSON: Yeah. We're not -- we're not seeking to  
18 have you do that.

19 HEARING OFFICER ZWEIGHAFT: Okay. Thank you. All right.  
20 So go ahead. I didn't mean to --

21 MR. MENDELSON: That's all right.

22 Q BY MR. MENDELSON: This -- this is 51. Do you recognize  
23 it, Ms. Doud?

24 A Yes, it's an email that I sent to (b) (6), (b) (7)(C) once I had  
25 received the tally with my name affixed to it and reiterated

1     that I had not consented and had objected to my name being  
2     placed on the tally.

3           MR. MENDELSON:   Okay.   So we move the admission on the  
4     limited bases just discussed a moment ago of Employer Exhibits  
5     50 and 51.

6           MR. IGLITZIN:   I object to 51 on the basis of relevance  
7     because it has -- it -- it -- it's -- it in fact has no  
8     relevance other than the objection that has been overruled.  
9     And -- and if I could ask -- well, after that, I'd like to see  
10    50 again because it -- it went by me a little fast.

11          HEARING OFFICER ZWEIGHAFT:   Oh, okay.   I mean, I agree  
12    with you.   I don't know what the probative value of 51 is, but  
13    I'll -- I'll -- Ms. Schneider, do you have a position on 50 or  
14    51?

15          MS. SCHNEIDER:   I would echo Mr. Iglitzin.   I don't  
16    know -- like you stated, Madam Hearing Officer, Objection 17 is  
17    not being heard.

18          HEARING OFFICER ZWEIGHAFT:   Yeah.

19          MR. MENDELSON:   So Ms. -- Ms. -- Ms. Carter articulately  
20    stated that the purpose is to demonstrate the -- the  
21    transmission of communication between the Region and Ms. Doud.  
22    And in this instance, there was communication obviously, but  
23    our position is there were other instances there should have  
24    been, and there was not.   That's -- that's the purpose.

25          HEARING OFFICER ZWEIGHAFT:   Okay.   And --

1 MR. IGLITZIN: And -- and --

2 HEARING OFFICER ZWEIGHAFT: I'm going to -- I'm going  
3 to -- I'm going to accept -- I'm going to receive it, but I --  
4 I think I've been clear that I don't think that it's alone, you  
5 know, any -- any evidence of objectionable conduct. There's a  
6 lot of email. I don't know that it -- that's coming into the  
7 record. I don't know that one more is going to overly burden  
8 the record, but -- so I'll accept it, but I -- I think I've  
9 been clear about the purpose, and I think the Employer  
10 recognizes the limited purpose.

11 So 50 and -- I'm sorry. Mr. -- Mr. Iglitzin wanted to see  
12 50 again. So I'll receive 51.

13 **(Employer Exhibit Number 51 Received into Evidence)**

14 HEARING OFFICER ZWEIGHAFT: And can we just show Mr.  
15 Iglitzin 50 again?

16 MR. IGLITZIN: Yeah, I have no objection to 50. Thank  
17 you.

18 HEARING OFFICER ZWEIGHAFT: Okay. Ms. Schneider?

19 MS. SCHNEIDER: No objection.

20 HEARING OFFICER ZWEIGHAFT: Okay. So 50 and -- Employer  
21 50 and Employer 51 are both received.

22 **(Employer Exhibit Number 50 Received into Evidence)**

23 MR. MENDELSON: Thank you.

24 **RESUMED DIRECT EXAMINATION**

25 Q BY MR. MENDELSON: I -- I don't wish to be redundant, but



1 I'm not sure what I elicited from the witness earlier, so I  
2 just want to return to one specific ballot, namely -- and  
3 thi -- and this is what I'd said earlier to the hearing officer  
4 that I think after the witness' examination, the company does  
5 want to be heard about Ms. --

6 A Um-hum.

7 Q --(b) (6), (b) (7)(C) You -- you gave some testimony before, Ms.  
8 Doud, about that ballot and how it was handled. What I don't  
9 remember is whether I asked you or whether you testified to  
10 your knowledge, if any, about whether that ballot was counted?

11 A It was counted.

12 MR. MENDELSON: Okay. Then separately, Madam Hearing  
13 Officer, I realized a few moments after we had passed through  
14 this, and then I didn't want to stop the -- the witness from  
15 proceeding to conclusion. I'd like to make an offer  
16 regarding -- you had -- you had barred the witness from  
17 testifying about her experience in Starbucks elections with a  
18 number of Board representatives at vote counts. I'd like to  
19 make an offer of proof as to what her testimony would be. I  
20 recognize it as an offer of proof. It's not evidence. I don't  
21 know if you'll permit me to do it, if you want me to do it  
22 through question and answer or just making the representation  
23 myself.

24 HEARING OFFICER ZWEIGHAFT: You can make the  
25 representation.

1           MR. MENDELSON: So the offer of proof in connection with  
2           the examination that I sought to elicit from Ms. Doud as to the  
3           number of Board representatives that she has experienced at  
4           Starbucks' election vote counts she has conducted or attended  
5           is that she would have said one or at most two.

6           HEARING OFFICER ZWEIGHAFT: Okay.

7           MR. MENDELSON: Okay. Finally, I -- I think this is it,  
8           and then Ms. Carter will at some point interrupt me if she  
9           thinks I've missed something.

10          Q     BY MR. MENDELSON: Ms. Doud, when you spoke with the  
11          whistleblower, did you memorialize in a document for use in  
12          this proceeding the substance that the whistleblower related to  
13          you?

14          A     In the offer of proof.

15          Q     I'm sorry?

16          A     In the offer of proof.

17          Q     Well, I'm -- is that -- is that where you memorialized it?

18          A     That's where I memorialized it for use in this proceeding.  
19          That's your question.

20          MR. MENDELSON: I got it. That's -- that's what I was --  
21          that's what I was trying to ascertain.

22          Okay. So Madam Hearing Officer, at this time, I would  
23          like to propose the admission into the record of paragraphs 4,  
24          5, 6, and 8 of the offer of proof as substantive evidence based  
25          upon the unavailability of the declarant, the whistleblower.

1 And in addition, in those four paragraphs, the unavailability  
2 of any other declarant identified as a speaker, specifically in  
3 the case of Mr. Frumkin in numbers 5 and 6, his testimony on  
4 Wednesday was that he could not recall the phone conversations  
5 that -- that are related. And in the case of (b) (6), (b) (7)(C) and  
6 (b) (6), (b) (7)(C) -- (b) (6), (b) (7)(C), neither -- neither the documents that are  
7 referenced in numbers 4 and 8 nor any testimony is available to  
8 the company.

9 And so at this time, under Rule 804(b) (3) and 804(a) (3) as  
10 well as 804(a) (1) -- so it's 804(a) (1), (a) (3), and 804(b) (3),  
11 we believe that paragraphs 4, 5, 6, and 8 of the offer of proof  
12 should be received in evidence.

13 HEARING OFFICER ZWEIGHAFT: Okay. I'm not going to  
14 receive those in evidence as -- as anything other than an offer  
15 of proof at this time. Again, I think this is really  
16 premature. We've not -- we don't have a full record yet.  
17 You'll -- you will still have an opportunity to make a request,  
18 or there's a request pending I believe, so I'm not going to --  
19 I'm -- I'm not going to entertain that at this time.

20 MR. MENDELSON: Okay. Understood. With that, Ms. Carter,  
21 if there's something you can tell me that would -- we'll ask  
22 the hearing officer to let us go off the record. You think  
23 I've covered everything we talked about?

24 MS. CARTER: I think there is one more exhibit, Exhibit  
25 78, which I circled -- I -- I circulated with 79 at the

1 beginning of the break to Dmitri, that we haven't discussed yet  
2 with this witness.

3 MR. MENDELSON: Oh, I'm -- let me -- let me -- let me take  
4 a look. I'm sorry. Oh, yes, yes, yes. I'm sorry. Thank you.  
5 Ms. Carter, as always, is right.

6 Q BY MR. MENDELSON: So Ms. Doud, do you -- do -- did you  
7 have any kind of exchange with the hearing officer acting in a  
8 different capacity during the investigation of the objections  
9 relating to the document that cleared the challenge?

10 MR. IGLITZIN: I'm -- I'm going to object. Exhibit 78 is  
11 again more arguing about Ms. Doud's unhappiness about the  
12 Region having a -- having indicated her presence at the -- at  
13 the ballot count or the nomenclature used. And as the hearing  
14 officer pointed out, all the objections based on that have been  
15 denied and are not before us today. So it's completely  
16 irrelevant.

17 HEARING OFFICER ZWEIGHAFT: No, I don't think that's what  
18 78 goes to. I believe it goes to something else, correct?

19 MR. MENDELSON: Yes.

20 HEARING OFFICER ZWEIGHAFT: The -- the -- the Employer --  
21 so in this case, the challenges which are not -- you know,  
22 let's be clear, are not before me. This is the report on  
23 objections only, and that was because there were Employer  
24 challenges that the Union, for the purposes of this case,  
25 agreed to sustain. The Employer, I believe, and I, you know,



1 will let Employer counsel correct me if I'm -- if I misstate  
2 this, but the Employer objected to -- to sustaining those  
3 challenges. It was -- so there was a stipulation that was  
4 circulated. It was signed by the Union not by the Employer,  
5 and then the Regional Director -- I believe it was the acting  
6 Regional Director at that point -- approved it with the  
7 unilateral -- it was a unilateral stipulation at that point.  
8 And I believe that 78 goes to the response to that.

9 MR. IGLITZIN: Right. And I want to clarify. 78  
10 consisted of communication by yourself, Hearing Officer. So  
11 it's really improper to be in front of you as being submitted  
12 as evidence of something. You're correct. I misstated. This  
13 seems to be Starbucks' unhappiness about the Region's ruling  
14 being characterized as a stipulation. You responded to that  
15 concern in Exhibit 78, but it still has nothing to do with any  
16 objection, any objection to the election, as I understand.

17 MR. MENDELSON: So in opening statements, Mr. Frumkin, I  
18 think I've said this before, made the assertion that the  
19 challenge ballots -- because the challenges were sustained,  
20 essentially, and this is my phraseology, disappeared into the  
21 ether as if they'd never -- this is his language -- as if they  
22 never existed. Ballots never were cast.

23 We -- we respectfully disagree, and we're not attacking  
24 the hearing officer here. We're not seeking to set up any kind  
25 of argument that compromises her ability to be the hearing

1 officer. We just simply want the record to be complete, and  
2 that's why I was -- Ms. Carter's refreshing me, seeking to  
3 have -- to just identify this exchange.

4 HEARING OFFICER ZWEIGHAFT: We're getting a little  
5 background noise. I -- I think it might be actually coming  
6 from the court reporter. I don't know if --

7 UNIDENTIFIED SPEAKER: Good?

8 HEARING OFFICER ZWEIGHAFT: Thank you.

9 MR. IGLITZIN: And again, if -- unless the hearing officer  
10 is prepared to -- to rule on it, I would just point out that  
11 the -- it is not disputed that Starbucks challenged seven  
12 ballots. Those are the ballots we've been talking about the  
13 last several days. And those ballots were never opened, never  
14 counted.

15 HEARING OFFICER ZWEIGHAFT: Right.

16 MR. IGLITZIN: The -- this document goes entirely to the  
17 Region suggesting that that was a stipulation, and Littler  
18 saying, no, we didn't ever agree to that. But it has nothing  
19 to do with the election ge -- in general. And it does  
20 implicate the hearing officer because you're the one who  
21 responded to the complaint.

22 HEARING OFFICER ZWEIGHAFT: Well, I -- I think that you --  
23 I think what the Employer is trying to get on is that they had  
24 agreed to sustaining the cha -- their challenges even though it  
25 was their own. I think that --

1           MR. IGLITZIN: Well, then they could -- they could submit  
2 an exhibit which is them saying that but not an exhibit that  
3 includes your response to their saying it, it seems to me.

4           MR. MENDELSON: There's no -- there's no reason not to  
5 have a complete correspondence here. Again, we're not  
6 attacking the hearing officer. We're not trying to set up any  
7 kind of argument that goes to her ability to decide this. It  
8 is simply a happenstance that the hearing officer was involved  
9 in the investigation. We accept that. So we would -- we  
10 would -- I'd like to ask the witness to confirm the recognition  
11 of the document, and then I would move its admission.

12           HEARING OFFICER ZWEIGHAFT: Okay. Okay. Why don't we  
13 have her at least -- I think we haven't done that. So  
14 we're arguing over it without having it shown on the screen.  
15 Let's do that.

16           And Ms. Schneider, I -- I also would like you to respond  
17 when you come of -- after it's identified.

18 Q       BY MR. MENDELSON: Ms. Doud, do you -- Ms. Carter will  
19 scroll down. Do you recognize these emails?

20 A       Yes. It's an email thread regarding the stipulation on  
21 challenges and revised tallying.

22           MR. MENDELSON: Thank you. We move the admission.

23           HEARING OFFICER ZWEIGHAFT: Okay. I -- Mr. Iglitzin, I --  
24 unless you have --

25           MR. IGLITZIN: I don't need to -- I don't need to repeat

1 my --

2 HEARING OFFICER ZWEIGHAFT: Okay.

3 MR. IGLITZIN: -- myself on that.

4 HEARING OFFICER ZWEIGHAFT: Okay. Ms. -- Ms. Schneider?

5 MS. SCHNEIDER: I don't know that this document speaks to  
6 any of the objections that are being hear -- heard today, but  
7 I -- I -- I don't want to take a position on it. I'll -- I'll  
8 defer to you, Madam Hearing Officer.

9 HEARING OFFICER ZWEIGHAFT: Okay. All right. I -- I  
10 agree, and I think that was a good point. I don't think that  
11 it does bear specifically. I think it does go to the -- the  
12 potential effect on the election argument. And so I will  
13 accept it for that purpose. So Employer 78 is -- is received.

14 **(Employer Exhibit Number 78 Received into Evidence)**

15 MR. MENDELSON: Thank you. And with that, once more,  
16 unless Ms. Carter rights me when I'm going wrong -- so I'll  
17 give her a moment to interrupt me here if necessary -- I  
18 believe that we have no further questions of Ms. Doud at this  
19 time.

20 Is that correct, Ms. Carter?

21 MS. CARTER: That's correct.

22 MR. MENDELSON: Okay. Thank you.

23 HEARING OFFICER ZWEIGHAFT: Okay. Mr. Iglitzin, I said  
24 that I would give you some time, and I will.

25 Ms. Schneider, do you anticipate having questions for Ms.

1 Doud?

2 MS. SCHNEIDER: I think that it will depend on Mr.  
3 Iglitzin's choice, whether he -- whether he has questions or  
4 not. If I do, I don't think it will be lengthy, and I can use  
5 the same time that Mr. Iglitzin has to -- to prepare.

6 HEARING OFFICER ZWEIGHAFT: Okay. Thank you.

7 Mr. Iglitzin, how long do you think you need?

8 MR. IGLITZIN: I really only five minutes. We just need  
9 to circulate a proposed Union exhibit.

10 HEARING OFFICER ZWEIGHAFT: Okay. All right. Off the  
11 record.

12 MR. IGLITZIN: Thank you.

13 HEARING OFFICER ZWEIGHAFT: Okay.

14 (Off the record at 2:09 p.m.)

15 HEARING OFFICER ZWEIGHAFT: Okay. Mr. Iglitzin.

16 MR. IGLITZIN: All right. Thank you. Good morning and  
17 afternoon, Ms. Doud, depending on where you are.

18 THE WITNESS: Afternoon.

19 MR. IGLITZIN: I'm going to ask you a couple of questions  
20 about an exhibit which the Union has just circulated, and I'm  
21 going to try to share my screen.

22 Actually, Gabe, can you share your screen with  
23 Petitioner's Exhibit 9? And I apologize for it being out of  
24 numerical order.

25 THE WITNESS: It's okay.

1 MR. IGLITZIN: Get the view and maybe maximize her -- you  
2 know, expand it and then scroll down so Ms. Doud can look at  
3 it.

4 THE WITNESS: Oh, you're going -- I'm --

5 MR. IGLITZIN: A little fast. Little fast.

6 THE WITNESS: You're scrolling fast. Sorry.

7 MR. IGLITZIN: Yeah, I want her to see the date and  
8 everything.

9 THE WITNESS: I can't see -- I can't see the date. I'm  
10 sorry. There you go. Thank you. Okay. Okay.

11 **CROSS-EXAMINATION**

12 Q BY MR. IGLITZIN: Ms. Doud, do you recognize this letter?

13 A Yes.

14 Q Can you tell us what it is?

15 A It's a letter regarding the challenges, and I was  
16 incorrect on my seventh challenge. It was (b) (6), (b) (7)(C) not  
17 (b) (6), (b) (7)(C) .

18 Q And did you receive this letter from the National Labor  
19 Relations Board?

20 A I'm sure I did.

21 MR. IGLITZIN: I would offer Petitioner's Exhibit 9.

22 MR. MENDELSON: No -- no objection.

23 MS. SCHNEIDER: No objection.

24 MR. IGLITZIN: And --

25 HEARING OFFICER ZWEIGHAFT: Petitioner Exhibit 9 is

1 received.

2 **(Petitioner Exhibit Number 9 Received into Evidence)**

3 MR. IGLITZIN: Thank you.

4 Q BY MR. IGLITZIN: If you -- if Gabe scrolls down a little  
5 bit more, we'll see that the parties are requested to provide a  
6 statement of position with respect to the challenges of each  
7 voter listed above by May 12th, 2022. Did Starbucks provide  
8 such a submission to the Region?

9 A I do not recall.

10 Q If I represent to you that our office does not have any  
11 record of receiving a copy of any such submission, would you  
12 think it is reasonable to infer that you either did not provide  
13 such a submission or did not provide a copy to our office?

14 A No, I don't recall whether we did one or not.

15 MR. IGLITZIN: All right. I have no further questions.

16 HEARING OFFICER ZWEIGHAFT: Okay. Ms. Schneider?

17 MS. SCHNEIDER: I would like to ask some questions,  
18 please. And I would actually first like to use -- Mr. Iglitzin  
19 and Mr. Frumkin, would you mind pulling that back up for me to  
20 use that document again, please? So Petitioner's 9.

21 Ms. Doud, I wanted to ask you a question on it.

22 Thank you.

23 **CROSS-EXAMINATION**

24 Q BY MS. SCHNEIDER: Ms. Doud, you testified earlier that  
25 (b) (6), (b) (7)(C) ballot was challenged because it did not have a

1 postmark, but isn't it true that his ballot was challenged  
2 because he was no longer employed as of April 1st, 2022?

3 A That's what this letter says.

4 Q And you testified that (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) vote was counted.

5 And I wanted to clarify that (b) (6), (b) (7)(C) ballot was not challenged; is  
6 that right?

7 A That's correct.

8 Q Okay. And I want to visit again the -- the details about  
9 the ballot count, specifically when you were testifying about  
10 the ultra box and -- and the ballot that was in the flap of that  
11 box.

12 MS. SCHNEIDER: I'm getting feedback. I think it might be  
13 from the court reporter.

14 HEARING OFFICER ZWEIGHAFT: Okay.

15 THE COURT REPORTER: I'm sorry about that.

16 MS. SCHNEIDER: We still need the -- I'm sorry. You know  
17 what? I don't need the document anymore.

18 HEARING OFFICER ZWEIGHAFT: Okay. So lets take that down.  
19 It's a bit easier to see everybody if it's (indiscernible,  
20 simultaneous speech) --

21 MS. SCHNEIDER: Sorry.

22 Q BY MS. SCHNEIDER: When -- so you -- you testified -- and  
23 I just want to understand at what point in the count the  
24 seventh ballot was realized to not be, you know, on this table  
25 surface or desk surface with the others. So you said that the



1 ballots went into the box with only their, is it inner  
2 envelope? Is that right?

3 A That's my recollection. We were in the breakout room. We  
4 did the challenges. They were removed from the outer  
5 envelope -- I believe they were blue -- that had the  
6 signatures. They went in the inner envelope that had the  
7 ballot in it, went into the cardboard ultra box, and then we  
8 went back to -- I don't know what it's called -- the main room.  
9 The ballots -- (b) (6), (b) (7)(C) took the ballots out of the box, set  
10 the box on the floor, proceeded to do the count. I believe (b) (6), (b) (7)(C)  
11 did the count. And when there were only six ballots, (b) (6), (b) (7)(C)  
12 started looking for the seventh one --

13 Q Okay.

14 A -- because over in the other room, there were seven.

15 Q Okay. And when (b) (6), (b) (7)(C) did the count in that specific  
16 instance when you're identifying that (b) (6), (b) (7)(C) did the count, that  
17 was when (b) (6), (b) (7)(C) opened each ballot and counted the yeses and the  
18 nos for the six ballots that were there; is that accurate?

19 A I believe that's what (b) (6), (b) (7)(C) did. (b) (6), (b) (7)(C) took them out, got on  
20 the floor, started doing the ballot count. And then when there  
21 were only six, (b) (6), (b) (7)(C) looked for the seventh one.

22 Q Okay. So the box was on the floor out of view for long  
23 enough for (b) (6), (b) (7)(C) to count six ballots?

24 A Yes.

25 Q Okay. But not also to take six ballots out of envelopes?

1 A (b) (6), (b) (7)(C) took them out of the yellow -- it was to -- I think --  
2 or 12, I don't --

3 Q Did the ballots go back into the box when they were just  
4 the bare ballots, or were they only ever in the box when they  
5 had envelopes on them?

6 A I'm thinking. Let me think back to the ballot count. I  
7 can't remember if (b) (6), (b) (7)(C) took the yellow ones out, took them out,  
8 put them back, put just the ballots in, and shook them up. I  
9 cannot remember that.

10 Q Okay. That's okay. One -- one other thing that I wanted  
11 to clarify. And this goes back to Madam Hearing Officer's  
12 questions that she was asking you, Ms. Doud. When you were  
13 stating that you didn't -- how many Board agents were in -- in  
14 the room, you -- everybody was using the term "in the room". I  
15 want to clarify that we're talking about a virtual Zoom room  
16 and not a physical room together with (b) (6), (b) (7)(C); is that right?

17 A Yes. We -- I -- I apologize for that. Yes, we -- I was  
18 talking about a virtual room like we're in right now for this  
19 hearing. And I do not believe all four Board agents were in  
20 one physical room together.

21 Q Okay. And there -- (b) (6), (b) (7)(C), in fact, was alone in the  
22 room where (b) (6), (b) (7)(C) was conducting the ballot; is that correct?

23 A That is -- that's my understanding.

24 Q Okay. And there's no evidence that anyone else was in the  
25 room with (b) (6), (b) (7)(C) during the count or after the count as far as you

1 know, correct?

2 A Not to my knowledge.

3 Q Okay. And did you ever hear anybody else speaking in the  
4 room with (b) (6), (b) (7)(C)?

5 A Not that I recall.

6 Q Okay. And when (b) (6), (b) (7)(C) left the room to copy the challenged  
7 ballots, did you see anybody else enter the physical room where  
8 (b) (6), (b) (7)(C) had been?

9 A I wouldn't have been able to do that. The camera was  
10 pointed down at the desk showing the voter -- the challenged  
11 list.

12 MS. SCHNEIDER: Okay. I have no further questions. Thank  
13 you.

14 HEARING OFFICER ZWEIGHAFT: Okay. I ju -- I -- I want to  
15 clar -- I -- I'll -- I just want to clarify a couple of things.  
16 And I think it's clear, so forgive me if I'm belaboring, but  
17 when you say that you went from one -- you went into the other  
18 room, this is again the virtual room, right? Did -- (b) (6), (b) (7)(C)  
19 was in one fixed spot while (b) (6), (b) (7)(C) was count -- like, during the  
20 count except for when (b) (6), (b) (7)(C) went out with the challenges at the  
21 end; is that right?

22 THE WITNESS: When we went from the virtual break --  
23 breakout room back to the regular room, I don't know if (b) (6), (b) (7)(C)  
24 went out of (b) (6), (b) (7)(C) physical room or not, but when (b) (6), (b) (7)(C) was on  
25 camera that I could see (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) was in the same physical room.

1 HEARING OFFICER ZWEIGHAFT: Okay. That's -- okay. And --  
2 and so -- and I actually -- thank you for clarifying because I  
3 did not understand this. So the other Board agents who were  
4 watching were also virtual. They were not --

5 THE WITNESS: They were virtual, yes.

6 HEARING OFFICER ZWEIGHAFT: Okay. Okay. I did not  
7 understand that. Thank you for clarifying that.

8 THE WITNESS: I apologize.

9 HEARING OFFICER ZWEIGHAFT: No, no, no, the -- the --  
10 that's not anybody's fault. That's why we do this.

11 And so when (b) (6), (b) (7) left with the challenged ballots, they  
12 were in the -- they were still in their envelopes marked  
13 "challenge", and (b) (6), (b) (7) said (b) (6), (b) (7) was making copies of them. So  
14 all -- so did (b) (6), (b) (7) kind of -- is it your testimony, did (b) (6), (b) (7)  
15 reposition (b) (6), (b) (7) camera a little, somehow that you could then see  
16 a desk, or can you just explain that to me again?

17 THE WITNESS: Yeah, so I don't know what (b) (6), (b) (7) did with the  
18 camera, but when (b) (6), (b) (7) got up, what we could see was (b) (6), (b) (7) desktop  
19 which had the list that (b) (6), (b) (7) was filling out about the  
20 challenged ballots.

21 HEARING OFFICER ZWEIGHAFT: Okay.

22 THE WITNESS: (b) (6), (b) (7) kind of had it down anyway, so it wasn't  
23 really up like our cameras are right now. When (b) (6), (b) (7) was dealing  
24 with the ballots, the camera --

25 HEARING OFFICER ZWEIGHAFT: Oh, (b) (6), (b) (7) had it --



1 THE WITNESS: -- was down.

2 HEARING OFFICER ZWEIGHAFT: -- oriented so that you could  
3 see the ballots?

4 THE WITNESS: Yes.

5 HEARING OFFICER ZWEIGHAFT: Okay. Okay. I understand  
6 that now. Okay. Thank you. I don't have any -- I don't have  
7 anything further at this time.

8 Mr. Mendelson, do you have redirect?

9 MR. MENDELSON: Can I -- can I just have two minutes with  
10 Ms. Carter?

11 HEARING OFFICER ZWEIGHAFT: Yes, two minutes.

12 MR. MENDELSON: Thank you.

13 (Off the record at 2:42 p.m.)

14 HEARING OFFICER ZWEIGHAFT: Okay. All right, Mr.  
15 Mendelson.

16 MR. MENDELSON: No -- no questions.

17 HEARING OFFICER ZWEIGHAFT: No further questions? Okay.

18 Mr. Iglitzin, do you have anything just based on only on  
19 what Ms. Schneider asked?

20 MR. IGLITZIN: I do not.

21 HEARING OFFICER ZWEIGHAFT: Okay. All right. Ms. Doud,  
22 thank you for your testimony this morning and this afternoon,  
23 depending on where you are.

24 Okay. So Mr. Mendelson, I believe you -- I believe you're  
25 waiting then for a ruling on the employee testimony; is that

1 correct?

2 MR. MENDELSON: That's correct. And -- and I had said to  
3 you earlier that I did want to raise one matter relating to our  
4 colloquy on Wednesday. You had granted the petition to revoke  
5 the Union file on behalf of (b) (6), (b) (7)(C), and in a moment I'm  
6 going to probably turn this over to Ms. Carter, who I think can  
7 be much more articulate about it.

8 We -- I'm -- I'm perhaps oversimplifying this. We thought  
9 that you ruled in part because you were troubled that the offer  
10 of proof on the objections did not identify (b) (6), (b) (7)(C) as a  
11 person as to whom we thought there was a objectionable conduct  
12 or Board agent misconduct relating to (b) (6), (b) (7)(C) ballot. And  
13 we -- we sort of scratched our heads afterwards and asked  
14 ourselves why would you have drawn the inference that we should  
15 have known that? Because I think our view is that -- as I  
16 think Ms. Doud's testimony indicates, all we knew up to the  
17 ballot count was that there were two people who -- who hadn't  
18 gotten ballots, and then they were going to get them. And we  
19 assumed they would be mailed to them, that that's what (b) (6), (b) (7)(C)  
20 (b) (6), (b) (7)(C) told Ms. Doud and (b) (6), (b) (7)(C) testified.

21 And at the -- the ballot count, we -- we -- we were  
22 puzzled -- I wasn't there; Ms. -- Ms. Carter and Ms. Doud  
23 were -- about all these ballots that didn't have any postmark.  
24 And so we had a sense that they might be a problem, but we  
25 didn't know the extent of it.

1           So I think we wanted to ask you to revisit your ruling  
2           that the petition to revoke is properly granted as to (b) (6), (b) (7)(C)  
3           (b) (6), (b) (7)(C) if -- well, to the extent it was based in part upon your  
4           conclusion that we didn't submit evidence in -- in -- or offer  
5           an offer of proof on that portion of the objection. We -- we  
6           think that it -- it was inappropriate or improper for you to  
7           think that we should have figured this all out, the depth --  
8           the depth of what we think is Agency misconduct.

9           Ms. Carter, do you need to supplement me? Have I captured  
10          the tenor of our problem?

11          MS. CARTER: No, I think you captured it.

12          MR. MENDELSON: Okay. Thank you.

13          HEARING OFFICER ZWEIGHAFT: So what -- so I think I'm  
14          unclear -- and there -- I think Ms. Doud said something earlier  
15          that I don't think I understood on Wednesday, and maybe-- if it  
16          was my confusion, then I apologize. Are -- is it your position  
17          that there was no postmark on (b) (6), (b) (7)(C) ballot, on (b) (6), (b) (7)(C) --

18          MR. MENDELSON: On -- on -- on (b) (6), (b) (7)(C) ballot, that's  
19          correct.

20          HEARING OFFICER ZWEIGHAFT: Okay.

21          MR. MENDELSON: I'm not sure. I want to be fair. I think  
22          Mr. Frumkin may have told you that he thinks we're mistaken,  
23          but I'm looking back through now, and I believe that that is  
24          what Ms. Doud testified because that's our understanding that  
25          there was no postmark on the (b) (6), (b) (7)(C) ballot.

1 HEARING OFFICER ZWEIGHAFT: It wasn't challenged? That --  
2 I think that's where my confusion came in because if --

3 MR. MENDELSON: Yeah, yeah, you're -- you're --

4 HEARING OFFICER ZWEIGHAFT: -- if (b) (6), (b) (7) -- if --

5 MR. MENDELSON: You're -- you're probably right. It  
6 wasn't challenged, but her testimony was there was no postmark.  
7 Whether that's a product of our mistake, I'm not sure. But --  
8 but the circumstance is there was no postmark, and our  
9 position, of course, is the challenges have nothing to do with  
10 the matter of Board misconduct -- Board agent misconduct.

11 HEARING OFFICER ZWEIGHAFT: Okay. Now I understand that.  
12 I mean, I think I did not understand that there was no postmark  
13 on (b) (6), (b) (7) ballot. I think I'm still confused about that, whether  
14 there was or not. I mean, I -- you know, if -- if (b) (6), (b) (7) vote --  
15 let me put it this way. If (b) (6), (b) (7) voted in person, if (b) (6), (b) (7) came  
16 into the regional office, I think I would be open to hearing  
17 that testimony because I think that it goes to objections that  
18 are before me, and I -- I don't -- I would not have limited  
19 that. I just -- I think that this is -- this -- with regard to  
20 this witness, it's been very unclear. I'm still a little bit  
21 confused about it. So --

22 MR. IGLITZIN: If I could --

23 HEARING OFFICER ZWEIGHAFT: Yeah. Yeah.

24 MR. IGLITZIN: -- advance my issue?

25 HEARING OFFICER ZWEIGHAFT: Yeah, go ahead, please.



1 Please.

2 MR. IGLITZIN: First of all, it is clear from Petitioner's  
3 Exhibit 9 that Starbucks objected to votes of ballots that came  
4 in without postmarks, and they did that across the board. If  
5 they chose not to do that, which we think is factually not  
6 accurate, but that it would only have been a strategic move if  
7 they for some reason thought [REDACTED] was a no-vote, but in fact,  
8 I -- I think we can clarify that Starbucks' position was they  
9 were going to challenge every vote without a postmark. So in  
10 fact, the evidence before you does not establish by any  
11 reasonable inference that this worker's vote came in without a  
12 postmark.

13 And I think at this stage to reopen this issue based on  
14 nothing, based on no factual evidence, no offer of proof, no  
15 one has suggested there's any iota of evidence that this worker  
16 in fact dropped [REDACTED] ballot off or picked up a ballot or voted  
17 in person. It's purely speculative, and there has been  
18 concerns about time. Obviously, if there's going to be a new  
19 ruling, there's going to be a new request for a review of that  
20 ruling. And unlike the other workers, which we understand we  
21 have created actual records what we're arguing about --

22 MS. CARTER: No.

23 MR. IGLITZIN: -- there's nothing like that for this  
24 witness, this (indiscernible, simultaneous speech) witness.

25 MS. CARTER: May I res -- may I respond, Madam Hearing

1 Officer? I'm sorry. You cut out, Madam Hearing Officer.

2 HEARING OFFICER ZWEIGHAFT: Yeah, yes.

3 MS. CARTER: Okay. So the position that we've taken at  
4 this -- during the ballot count on those ballots that were not  
5 there with postmarks, for the two that we knew were mailed  
6 late, was a different reason from the position taken on the  
7 postmar -- on the Calvin Culey ballot with no postmark where  
8 the -- in the count it was represented, I have no idea how this  
9 got here.

10 It was not a -- it was not a decision to challenge every  
11 single ballot without a postmark when at the time you -- and I  
12 think even Mr. Frumkin has stated during this hearing that  
13 people may have slid ballots under the door. We didn't -- if  
14 we filed objections based on what we knew at the time and what  
15 we suspected based on presence of those two ballots which we  
16 thought had only just been mailed out having all of the sudden  
17 gotten there in time. So we suspected that there had been in-  
18 person voting based on the timing, but we did not at that time  
19 know definitively the full extent of what we know now based on  
20 this -- the evidence presented here. And respectfully we  
21 request being allowed to dr -- to call (b) (6), (b) (7)(C) as a witness  
22 to -- to find out if (b) (6), (b) (7)(C) was allowed to vote in person  
23 and to explore that if (b) (6), (b) (7)(C) was.

24 HEARING OFFICER ZWEIGHAFT: Okay. So you -- you -- am I  
25 correct that you actually don't know whether (b) (6), (b) (7)(C) voted in

1 person or not?

2 MS. CARTER: Correct. We know that (b) (6), (b) (7)(C) ballot did not  
3 have a postmark.

4 HEARING OFFICER ZWEIGHAFT: Okay. You do know that, but  
5 you don't know --

6 MS. CARTER: Correct. We do not know whether it was  
7 similar to the situation that Mr. Frumkin has represented  
8 Calvin Culey said to him, but we -- similar to Calvin Culey, we  
9 request to be able to call Calvin Culey as a witness to testify  
10 about how that ballot got there, and (b) (6), (b) (7)(C) for a sim -- (b) (6), (b) (7)(C)  
11 (b) (6), (b) (7)(C) for a similar reason.

12 MR. IGLITZIN: So I would suggest that if nothing else,  
13 (b) (6), (b) (7)(C) testimony. So first of all, we don't know. There  
14 is no firsthand, factual representation here that (b) (6), (b) (7)(C)  
15 ballot had no postmark. That is an after-the-fact speculation.  
16 If we look at the Petitioner's Exhibit 9, Starbucks objected to  
17 Calvin Culey's ballot, no postmark. Mr. -- and Alydia  
18 Claypool's ballot, no postmark and no longer employed. And  
19 Sage Quigley's ballot, no postmark.

20 MS. CARTER: Mr. Iglitzin, the --

21 MR. IGLITZIN: It -- it defies belief --

22 MS. CARTER: -- document speaks for itself.

23 MR. IGLITZIN: And -- I'm sorry. Please don't interrupt  
24 me. Ms. Carter, I'm speaking.

25 It defies reasonable belief or difference that Starbucks

1 challenged three voters' ballots for having no postmarks but  
2 didn't challenge a fourth. It is also noted that Starbucks has  
3 not provided any evidence that it rebutted the assertions made  
4 in Petitioner's Exhibit 9 as to what the challenges were and  
5 what the reasons for challenges were. That's a -- that --  
6 they've acquiesced in the Region's characterization of those  
7 challenges.

8 But at most, even if you drew every imaginable inference  
9 in Starbuck's favor, there is no reason to think that this  
10 witness' testimony would be anything but similar to -- to the  
11 other witness testimony. In fact, it's worth remembering that  
12 there is no factual dispute here that workers were allowed to  
13 go to Region 14 and cast ballots physically and not mail them  
14 in. So we shouldn't get too -- allow ourselves to be drawn  
15 down this road of thinking that that's a big thing that needs  
16 to be explored factually.

17 No one disputes that that happened. What's at issue  
18 before the hearing officer is, was that improper, or was it a  
19 reasonable effort by the Region to make sure workers could  
20 vote, as the Union submits?

21 MS. CARTER: Mr. Iglitzin, I apologize for interrupting  
22 you. We have now uncontradicted testimony on the record that  
23 b(6), (b)(7)(C) ballot was not postmarked from Ms. Doud, and we  
24 now -- you're -- the Petitioner's Exhibit 9 says what it says  
25 about the reasons for the challenges, but we do not have

1     uncontradicted evidence that it was postmarked. We actually  
2     have the opposite. We have uncontradicted evidence that (b) (6), (b) (7)(C)  
3     (b) (6), (b) (7)(C) ballot was not postmarked, in the record.

4             MR. IGLITZIN: I would suggest that rather than  
5     characterizing that as uncontradicted evidence, I would  
6     characterize it as extremely weak recollection, fairly vague by  
7     Ms. Doud, who has made other -- other errors --

8             HEARING OFFICER ZWEIGHAFT: This is argument. I -- I  
9     don't need -- I don't need either of you characterizing  
10    testimony in the -- in the record.

11            Ms. Schneider, do you want to be heard?

12            MS. SCHNEIDER: I don't wish to take a position. Thank  
13    you.

14            HEARING OFFICER ZWEIGHAFT: All right. Okay. So I  
15    apologize if there was a misunderstanding on my part. I do not  
16    think it was clear to me that (b) (6), (b) (7)(C) -- that (b) (6), (b) (7)(C) outside  
17    envelope did not have a postmark on it yest -- or Wednesday  
18    when we discussed this. The Regional Director sent Objection  
19    Number 4 to hearing, which alleges that there were  
20    irregularities and allowing special procedures for certain  
21    individuals, including allowing people to vote in person rather  
22    than wait for a ballot to be mailed to them.

23            If that was in fact the case for (b) (6), (b) (7)(C), then I think  
24    that (b) (6), (b) (7)(C) testimony could potentially be relevant, and I would  
25    re -- and I -- I would allow (b) (6), (b) (7)(C) to testify in this proceeding.

1 I think it's clearly covered -- if (b) (6), (b) (7) ballot in fact had no --  
2 if (b) (6), (b) (7) envelope in fact had no postmark, I think it would be  
3 covered by the objection, and I think that I have to allow (b) (6), (b) (7)  
4 to testify.

5 MR. MENDELSON: Thank you.

6 MR. IGLITZIN: And we would, of course, ask for the same  
7 leave. We will do a supplemental request for review and  
8 special permission to appeal to the Regional Director and to --

9 HEARING OFFICER ZWEIGHAFT: And I would ask you to get it,  
10 you know -- get it in today or just before you can -- you know,  
11 maybe you can just add (b) (6), (b) (7) -- you know, alert the Region that  
12 you're adding (b) (6), (b) (7) name to the mo -- to your motion. I haven't  
13 seen it, but --

14 MR. IGLITZIN: Yeah, it should not take long to do it now  
15 that it's on the rest of it's all drafted and filed.

16 HEARING OFFICER ZWEIGHAFT: Yeah, you can -- yeah.

17 MR. IGLITZIN: Thank you. I appreciate that.

18 HEARING OFFICER ZWEIGHAFT: Okay. Okay. So Mr.  
19 Mendelson, do you have -- putting aside these employee  
20 witnesses and putting aside any other request that you might  
21 make for any information from the Region or witnesses from the  
22 Region, do you have any additional witnesses at this time?

23 MR. MENDELSON: No. But on top of the two things you  
24 mentioned, there is the whistleblower, of course, so there's  
25 really three things. But no, we don't have any witness at this

1 time to proceed any further.

2 HEARING OFFICER ZWEIGHAFT: Okay. All right. We do, it  
3 seems to me, have some outstanding document issues to deal with  
4 with regard to redactions. Are there other -- are there other  
5 document issues that I'm not thinking of right now other than  
6 this -- the re --

7 MR. MENDELSON: The -- the -- the -- I had said this  
8 morning, I thought you were receptive, that we were going to  
9 identify the petition to revoke and responsive documents so  
10 that those portions of the many documents we marked would  
11 either be admitted or at least compartmentalized to be part of  
12 the record.

13 HEARING OFFICER ZWEIGHAFT: Right. All right. I think  
14 what makes sense would be for us to go off the record, and I  
15 can either let the parties or we can all stay on and discuss  
16 how we're going to do that and not burden the record with all  
17 the back and forth about it, and then come back on and, you  
18 know, either put things into the record or be prepared to put  
19 things into the record on Monday. Okay?

20 So off the record.

21 (Off the record at 3:00 p.m.)

22 HEARING OFFICER ZWEIGHAFT: Okay. So we've concluded  
23 witness testimony for today because we are awaiting rulings,  
24 frankly, on all of the other witnesses -- or at least all of  
25 the other Employer witnesses at this point, and we're still on

1 the Employer's case.

2 So we've had some off-the-record discussion, and I'm just  
3 going to quickly give a summary, and then I'll let the parties  
4 add any comments or correct me if I misstate anything. There  
5 are two -- two sets of documents that we anticipate coming into  
6 the record. The first is what's been pre-marked as Employer's  
7 Exhibits 1 through 35, which pertain to the various petitions  
8 to revoke that I've partially ruled on and partially reserved  
9 ruling on. I believe those 1 through 35 pertain to all of  
10 those petitions, and so we've had some discussion that we might  
11 not need all of those documents because some of those petitions  
12 have been either resolved and/or somehow mooted.

13 There's been some document production. There's been some  
14 testimony. Once we have a decision from the Regional Director,  
15 there'll be more testimony that may be in compliance with some  
16 of these petitions. So since we're not going to be on the  
17 record on Monday, we're not going to go consecutive days, that  
18 will give the parties some time and the Employer some time to  
19 figure out what it needs in the record with regard to the  
20 subpoena issues.

21 I do anticipate that the Region's petition to revoke will  
22 continue to be an issue because I -- I still don't think that  
23 I'll be in a position to rule on that with any finality because  
24 I've still given the Employer leave to make additional requests  
25 to the Region -- to the Regional Director and the General



1 Counsel. I think there was requests pending. So we'll see  
2 what the status of that is when we're next on the record on  
3 Tuesday.

4 Does anybody want to be heard just on those -- those  
5 documents and the -- and -- and any outstanding subpoena  
6 issues?

7 MR. MENDELSON: I -- I think we're fine with your  
8 statement.

9 HEARING OFFICER ZWEIGHAFT: Okay.

10 MR. IGLITZIN: The Union is as well.

11 HEARING OFFICER ZWEIGHAFT: Okay.

12 MS. SCHNEIDER: I -- I have nothing to add. Thank you.

13 HEARING OFFICER ZWEIGHAFT: Okay. Thank you.

14 All right. The second issue has been the redactions, and  
15 we were able off the record to identify the exhibits that we  
16 think this pertains to, and that was very helpful. So we think  
17 we're talking about Employer's Exhibits 63, 64, 65, 66, and 70.  
18 So we have received from Ms. Carter -- and when I say "we", I  
19 mean myself and the other parties have received from Ms. Carter  
20 redacted copies of those exhibits as well as a key. And none  
21 of us have had a adequate chance today to go through those.  
22 And since we're taking a break, we're going to go through those  
23 documents with the key and review those redactions. And then  
24 on Tuesday, I'm hopeful that we can just confirm those on the  
25 record and receive those documents with finality and move on

1 from that.

2 The Employer has represented also that it doesn't think  
3 that it's going to have additional documents that are going to  
4 require redaction or deal with these names. Of course, if they  
5 do, we'll deal with it, but we think that this is what we're  
6 talking about right now.

7 Does anybody have anything to add to any of that?

8 MR. MENDELSON: No.

9 MR. IGLITZIN: No.

10 MS. SCHNEIDER: No.

11 HEARING OFFICER ZWEIGHAFT: Okay. Thank you. All right.  
12 So we talked about -- I'm not sure if this was on the record or  
13 off the record. We're not going to go on Monday. We're going  
14 to adjourn this hearing until Tuesday. That's in part due to  
15 schedules with the party, but also because we don't have a  
16 decision from the Regional Director on the witnesses yet. And  
17 I'm -- what I'm hoping is that we would have that on Monday.

18 I would also hope that if we get that decision on Monday  
19 that we would have the witnesses ready on Tuesday so that we  
20 can go ahead and proceed. So I'm going to tell the parties  
21 that. I will send out a Zoom link for Tuesday to everybody  
22 once we're off the record today.

23 If we do not hear from the Regional Director on Monday,  
24 then, you know, we'll have to talk about scheduling, and I'll  
25 contact the parties off the record about that, and we may have

1 to adjourn. But I'm, you know, hopeful that we'll have  
2 something and be able to continue.

3 All right. Any questions about that?

4 MR. MENDELSON: No.

5 MR. IGLITZIN: Not from the Union.

6 MS. SCHNEIDER: No questions.

7 HEARING OFFICER ZWEIGHAFT: Okay. I want to thank  
8 everybody. I usually do this more toward the end, but I want  
9 to thank everybody for your participation and your cooperation.  
10 I know we're all in different time zones and that's been  
11 challenging for this hearing, and there's a lot of evidentiary  
12 issues in play. And I just wanted to thank everybody for their  
13 patience as we work through them. It's -- this hearing has  
14 been particularly challenging that way. So you know, thank you  
15 for -- thank you for bearing with each other and with the  
16 process.

17 Having said that, have a -- have a good weekend,  
18 everybody, and I will see you on Tuesday.

19 MR. MENDELSON: Thank you.

20 MS. SCHNEIDER: Thank you. You too.

21 HEARING OFFICER ZWEIGHAFT: Off --

22 MR. IGLITZIN: Thank you very much.

23 UNIDENTIFIED SPEAKER: Thank you.

24 MR. IGLITZIN: Bye.

25 HEARING OFFICER ZWEIGHAFT: Okay. Bye. Barry, thank you.

1 It was good seeing you.

2 THE COURT REPORTER: You -- you too.

3 HEARING OFFICER ZWEIGHAFT: All right. I'll see you soon.

4 THE COURT REPORTER: Okay.

5 **(Whereupon, the hearing in the above-entitled matter was**

6 **recessed at 3:26 p.m. until Tuesday, August 23, 2022 at 9:00**

7 **a.m.)**

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C E R T I F I C A T I O N

This is to certify that the attached proceedings, via Zoom videoconference, before the National Labor Relations Board (NLRB), Region 29, Case Number 14-RC-289926, Starbucks Corporation and Chicago & Midwest Regional Joint Board Workers United/SEIU, held at the National Labor Relations Board, Region 29, Two MetroTech Center, Brooklyn, New York 11201, on August 19, 2022, at 11:00 a.m. was held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording, accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.

*Adrian Morris*

BARRINGTON MOXIE

Official Reporter